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RUSSIAN SOCIOLOGY

**A Contribution to the History of Sociological
Thought and Theory**

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

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OF COLUMBIA UNIVERSITY

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RUSSIAN SOCIOLOGY

A CONTRIBUTION TO THE
HISTORY OF SOCIOLOGICAL THOUGHT AND THEORY

BY

JULIUS F. HECKER, Ph.D.



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1915

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BY

JULIUS F. HECKER

TO VIRAL
ADNOCTILIO

To

ELIZABETH JUNKER HECKER

THIS WORK IS AFFECTIONATELY DEDICATED
BY HER HUSBAND

PREFACE

THIS study has been made in the hope that it would fill a gap which exists in the history of sociological thought and theory. A history which as yet has not appeared in English, Dr. Paul Barth's "*Die Geschichte der Philosophie als Soziologie*", is perhaps the best work on the subject in German. A more recent work on the subject is by Faustus Squillace, "*La classification des doctrines sociologiques*". Neither of these writers, however, does more than merely mention Russian sociology nor says anything of the place it holds in the social-political history of Russia.

To keep this study of Russian Sociology within certain fixed limitations it became necessary to exclude the Russian belletristic literature which contains a good deal of sociological thought, as for example, the novels of Turgenev, Tolstoy, Dostoevsky and others. It also seemed expedient not to present the work of authors who only re-interpret the theories of others and who have had no influence in directing the general trend of Russian Sociology. Such authors are, for example, Smolikovsky, who expounded Comte's system to the Russians, and Stronin, who wrote on sociological analogies.

Of the three parts in this study the first may be regarded as introductory to the latter two. Part II is an analysis of the principal Russian sociological schools, and Part III contains the miscellaneous theories which have entered into the province of Russian sociology.

There is no uniform system of spelling Russian names in English. An attempt was made to transliterate all Russian

words based upon the English pronunciation of the alphabet. The Russianized name of the Russian capital " Petrograd " has been used (instead of St. Petersburg) throughout with the exception of quotations.

In conclusion, it is a pleasure to state that I owe my interest in sociology to the inspiring teaching of Professor Franklin Henry Giddings, who also spent much of his valuable time in the correction of the manuscript.

J. F. H.

NEW YORK, MAY, 1915.

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PART I

THE BEGINNINGS OF RUSSIAN SOCIOLOGY

CHAPTER I

THE SOCIAL-POLITICAL BACKGROUND OF RUSSIAN SOCIOLOGY

RUSSIAN sociology is truly Russian since most of it has been called into existence by the problems confronting the social-political life of that nation. To understand Russian sociology and to appreciate it, one must necessarily study it in the light of the history of Russia's social and political movements.

Russia has been called the land of extremes. Here a despotic and autocratic bureaucracy has been continually opposed by groups which championed the cause of the common people, but in their demands were just as uncompromising and rigid as the dominant autocracy they opposed. Is autocracy inevitable to Russia? Or is it an outgrown institution which maintains itself artificially by the use of brute force? These questions have been variously answered. The bulk of opinion, however, is quite unanimous that Russian autocracy has established itself under peculiar historical conditions and that it will pass away when these conditions shall have changed. There are others who consider Russian autocracy the resultant of ethnic composition, and of the psychology of the Slav as well as a product of geographical location and topographical peculiarities.

There are some sixty-five different racial and linguistic groups within the boundaries of the Russian Empire. Forty-six of these ethnic groups are found within European Russia and the Caucasus alone. Some of these peoples are still in the savage state and most of them are just emerging out of barbarism. In spite of this apparent ethnic hetero-

geneity the bulk of the population is Slavic,¹ and of these the Great Russians are the most numerous, representing in themselves, a highly homogeneous mass, about two-thirds of the whole population of Russia. The Russian Slav who inhabits the great plains of European Russia reflects in his psychology the geographic and climatic environment in which he lives. A certain apathy, plasticity and pacific quality are the characteristics of his nature. He is long suffering and forgiving, much rather bearing wrong than inflicting it. Being mystically inclined, he is non-political and sentimentally communistic.²

¹ The principal Slavic peoples of Russia besides the Great Russians are the Little Russians of the South, the White Russians of the West and the Poles. The Little Russians and White Russians, although speaking separate dialects are in religion and sympathy one with the Great Russians.

² Brückner in his *Geschichte der Russischen Literatur*, p. 1, calls the Russian Slav a born anarchist. Masaryk, in his *Sociologische Skizzen*, thinks that the Russians are not more anarchistic than other races but that their democracy is negative and preferably non-political. Our own observation favors in general Masaryk's view, with the difference that we believe that the passive non-political man may be aroused and become extremely active and dangerous. The occasional Jewish persecutions (pogroms), the vandalisms of the Russian revolution, and the deeds of the nihilists and terrorists may be cited as examples of this direct action. The sentimental communism of the Russian, whatever its cause, shows itself everywhere. The peasant has a tenacious hold upon the institution called the land commune or community ownership which, although by law (1906) now allowed to be broken up, nevertheless survives in a large degree. Recent statistics show that after the enactment of the law permitting withdrawal of land from the commune, out of 90,099,000 communal members 17,874,000, or only about 19 per cent, withdrew by May 1, 1906. The area of land held by the communes was, in 1906, 997,242,000 desyatines; by 1913, of this land was withdrawn 127,698,000 desyatines, or only about 11 per cent. These figures show that the communes which have little land are compelled to break up, whereas those which have more land prefer the communal way of life. This communal interest shows itself also among the many religious sects as the Dukhobors in Canada, the Tolstovsy and many others.

Russian autocracy is not a direct product of the Russian people; rather it is a foreign importation which developed, being favored not only by the psychological characteristics of the Slavs but invited by the geographic location of Russia, and consummated under unfortunate historical conditions.

The great open plain which constitutes most of European Russia is unprotected by any great mountain barriers and is easily accessible from the northwest and from the south-east. Through these open and by nature unprotected doors entered those elements which were to make up Russian autocracy. From the northwest came the Varyags or Norsemen, who established themselves as the first dynasties of the Russian Slavs; from the south came the Byzantine Missionary, who introduced the Greek-orthodox religion; and from the east came the Asiatic Conquerors, who crushed every institution of liberty,¹ and established their despotic rule, which, when adopted by the Muscovite princes, presented in itself a peculiar synthesis of Teuton militancy, Tartar despotism, and Byzantine sanctimoniousness. These three elements, whether organically united or not, were the dominant forces of Russian autocracy, maintaining themselves and predominating to the present day, although modified by Western culture, and at the present day represented by rulers of dominantly Germanic blood.

¹ When in the ninth century the Norsemen invaded the territory of the Russian Slavic tribes these had institutions of tribal democracy and city republics which governed themselves by the *Vecha*, an institution similar to the Roman assembly and by a kind of senate consisting of the wealthier classes, who were on their way to become the feudal aristocrats and plutocrats of the free city-states. The crushing of the free institutions of the Russian Slavs went on gradually. Thus the city republic Novgorod was finally destroyed by Ivan the Great, who also cast off the Mongolian yoke but maintained its despotic policies of centralization and autocratic control. Another city republic, Pskov, lingered till 1509 and was the last one to lose its independence.

4 Russian autocracy has had but two principal policies throughout its history, an internal policy of political, ecclesiastical and partly economic control and centralization, and an external policy of expansion towards the four seas: from the Baltic to the Pacific and from the Arctic to the Mediterranean. This policy if momentarily changed has been so under strong outside pressure. All attempts to better the lot of the common people and to give them greater liberties were carried out in times of national trouble and under threat of revolution.¹

Although long-suffering and slow to wrath, the people of Russia have risen from time to time, demanding the rights and possessions of which they had been robbed by the predatory interests which always, directly or indirectly, have associated themselves with Russian autocracy. In these struggles certain classes of the population have furnished the leaders and have given initiative to movements which have had for their purpose the abolition of autocratic control and the betterment of social and economic conditions for the common people. The leaders of these movements have sought to develop their programs of action and give to them rational justification by the aid of philosophy and of the social sciences.²

¹ For example, the emancipation of the serfs and other great reforms of the sixties were made possible after the disasters of the Crimean war. Fifty years later the government had to yield to the demand for a representative parliament when again disastrously humiliated during the Russo-Japanese war and the revolution which followed it. The present war (1914) freed Russia from the vodka curse and thus it goes throughout Russian history. The cost of its progress has been borne vicariously.

² This is true of all liberal movements from the days of Catherine II. Before this the leaders of the opposition were the Cossacks.

Stenka Razhin was one of the principal leaders of the popular uprisings in the seventeenth century, and Yemilyan Pugatchev in the eighteenth century. The philosophy of these early uprisings is cen-

This tendency has been directly responsible for the rise and development of most of Russian sociology. We will briefly indicate the nature of these movements and introduce their scholarly representatives before entering upon an analysis of the sociological systems of thought held by these men.

Peter the Great, says a Russian poet,¹ cut a window through into Europe. But Peter did not permit any liberal and philosophic currents to pass this window into Russia from the European atmosphere. His interests were throughout practical. The schools which he established had no use for philosophy nor for theology. They limited instruction to the practical arts and sciences. Catherine II of Russia widened this window and permitted French and English liberal thought to reach the newly-developing intellectual class. She loved to pose as an enlightened despot and imported Diderot in person to instruct her in the liberalism of the French encyclopedists. Montesquieu was her favorite philosopher.²

Her *Nakazy* (*Instructions*), a little book containing an outline of principles by which she intended to reform and

tered around the conception of the Messianic mission of the czars, who are sent by God to liberate the common people from the exploitation of the nobility and bureaucracy. Thus Pugatchev, although well known as the son of a Cossack, was believed to be the reincarnation of Peter III, aspiring to the throne, usurped by the wife of Peter III, Catherine II. This myth of something similar to a Messianic function of the czars has been believed by the common people for generations, and it explains the loyalty of the people to the crown in spite of their common hatred of the bureaucracy and of the nobility. We need not add that the Russian autocrats have done their utmost to perpetuate this belief among the masses and to persecute everything which tended to undermine the credulity of the people in this regard.

¹ Alexander Pushkin in his poem on Peter the Great.

² Speaking of him in a letter to D'Alembert (1765), she says: "Son livre est mon bréviaire." *Sbornik of the Russian Imperial Historical Society*, vol. x, p. 31.

govern Russia, reflects the *Spirit of the Laws* of Montesquieu.¹

Following the example of their sovereign, the young Russian intellectuals absorbed like sponges the ideas brought to them from the west. Voltaire, Adam Smith and the French Encyclopaedists were beginning to mould the plastic minds of many young Russians eager for knowledge. Beside French and English liberal thought another current of mystic German idealism found a ready soil among the Russian nobility. It expressed itself in the early Russian Masonic movement. In Moscow, Nicolai Novicov was leader of the Masons. He developed the first popular literature in Russia and organized schools to teach the illiterate masses, also aiding them through his philanthropic agencies. This period gave rise to journalistic activities which soon expressed more definite and opposing views, and which were really the beginning of public opinion in Russia. This golden age of intellectual activity in which Catherine II took intense interest, came to an abrupt and tragic close, occasioned by the rumors of the French revolution and by popular uprisings in Russia under the leadership of Pugatchev.² Catherine adopted a rigid censorship, suppressing many periodical publications and books, putting even her own "Nakazy" under the ban of the censor. She went further and persecuted the leaders who sided with the people. Novicov was thrown into prison, and the Masons and other voluntary societies had to disband. Radischev, who had taken seriously the liberal ideas which were permitted to be disseminated by Catherine, wrote a

¹ The "Nakazy" is a curious little book. It has been translated into English under the title *The Grand Instructions*, by Michael Tatischeff, who was a contemporary of Catherine II, and praises her as the wisest and most liberal of all sovereigns.

² Cf. *supra*, footnote, pp. 22-23.

book entitled, *A Journey from Petersburg to Moscow*,¹ in which he depicted the misery and oppression suffered by the common people, and rebuked their oppressors and exploiters. He was arrested, tried and banished to Siberia, thus becoming the first Russian martyr for the offense of attempting to shape public opinion.

Catherine tried to justify her reaction to arbitrary despotism by theorizing over the psychic characteristics of the Russian people, who, under the influence of Russia's peculiar geographic and climatic environment she claimed were unfit for self-government and can only prosper under an absolute autocracy. Already in her *Nakazy* we read this, her fundamental rule: "That the government which most resembles that of nature is that whose particular disposition answers best to the disposition of the people for which it is instituted".² And in the case of Russia, she adds in the opening of the *Nakazy* that it is autocracy. This theory, strange as it may seem, is still the principal philosophical justification of the apologists of Russian autocracy. It is curious, however, that these thinkers do not realize that the genius of the Russian people, whether attributable to geographic environment or to something else, continually produces personages and groups that think the opposite of that which is advocated by the minority in power, and that there are many historic facts to show that the Slavs once lived in the same environment under democratic organizations.³

¹ This book, suppressed by Catherine (in 1790), was not permitted to be published in Russia till after the revolution in 1905.

² Catherine II, *The Grand Instructions*, etc., translated by Michael Tatischeff, section 262.

³ Catherine II was not ignorant of these facts. In a letter to a certain Count Sch., dated August 15, 1784, she says: "Quand vous viendrez chez moi, je vous dirai bien d'autres choses encore comme par exemple que les lois des Saxons ou Slavons étaient remplies de l'esprit

The next movement in the struggle with Russian autocracy which stimulated sociological and political thinking is known as the *Decembrist movement*, named after the military insurrection which took place in Petrograd during December, 1825, at the time of the death of Emperor Alexander I, and the accession of Nicholas I. With the failure of the insurrection the movement was crushed, its leaders were executed or banished, and throughout the reign of Nicholas, autocracy, more severe perhaps than before in Russia, continued its iron rule.

The adherents of the Decembrists were of the military class, mostly army officers. Many of these became acquainted with French liberal ideas during the Napoleonic wars, and on their return home organized societies for the study of the political and social sciences. In the south, Colonel Pestel was the intellectual leader. He devised a constitution for Russia after the model of the French constitution of 1793. In the north, Colonel Muraviev wrote on the subject, favoring the constitutions of the United States and of Spain. Their theory of society in accordance with the time was the contractual, reflecting the English and French individualistic social philosophies. The greatest intellect of the Decembrists was Nicolai Turgenev. During his long years of exile he wrote his great three-volume work, "La Russie et les Russes".¹

de liberté, que cette liberté, se voit partout dans la seconde époque de nôtre histoire." *Sbornik of the Russian Imperial Historical Society*, vol. xv, p. 615.

¹ "Russia and the Russians," says the author, "consist of three rather different parts: the first part acquaints the reader with my public life; these are my personal reminiscences: the second represents the moral, political and social life of Russia; but in the third part I expound my views of the future of this Empire and also of the institutions and reforms which are necessary." *Russia and the Russians*, vol. i, p. 14. Russian ed., Moscow, 1907.

His views of society and social organizations were strongly influenced by the ideas of Montesquieu and of Adam Smith. He, however, was not a doctrinaire; his political program was evolutionary and practical. His insight into the future social and political development of Russia was prophetic. It followed almost literally the stages he predicted. First, he claimed, it was necessary to abolish serfdom; he advocated the reform of the institutions of justice, education, and representative local government, and finally a national constitution. He was a champion of private property and emphasized individual rights and freedom of conscience.

The Decembrists created no independent system of their own. They stimulated the intellectual class to study the social sciences as a means towards intelligent understanding of the existing social order. The liberalism advocated by the Decembrists was not confined within the secret societies of the Russian military caste. It seems to have permeated even before their time all the intellectual classes, and the masses, although understanding nothing about constitutional government, were nevertheless conscious of the heavy hand of the oppressors and were willing to join any movement which promised relief. Speransky, one of the more farsighted of Russian statesmen, who was able to read the "signs of the time", already in 1809, foresaw the rising storm which discharged itself in the Decembrists' insurrection. In the introduction to his draft of the "Constitution" which he hoped Alexander I would adopt, he says:

The Russian state is now passing through the second stage of the feudal system, namely, the epoch of autocracy. Undoubtedly, it is tending directly towards freedom. In part this tendency is even more straightforward in Russia than in other countries. The unfailing signs of it are: (1) That

people lose all esteem for the former objects of their veneration, e. g., for rank and honor. (2) The action of power is so weakened that no measure of government can be put into operation which calls only for moral, and not also for physical constraint. The true reason of this is that at present public opinion is in entire contradiction to the form of government. (3) No partial reform is possible, because no law can exist, if it may any day be overthrown by a gust of arbitrary power. (4) A general discontent is observed, such as can only be explained by a complete change of ideas, and by a repressed but strong desire for a new order of things. For all these reasons we may surely conclude that the actual form of government does not correspond to the state of popular feeling, and that the time has come to change this form and to found a new order of things.¹

Alexander I's plans for giving Russia a constitutional government failed of realization and were entirely abandoned after the Napoleonic wars and the reactionary "Holy Alliance", which aroused the Decembrists to plan the forceful overthrow of the autocracy. Nicholas I, who crushed the insurrection, was determined to eradicate liberalism from the Russian Empire. He established a rigid press censorship,² and a brutal iron discipline in the army, which was also extended to all the ranks of bureaucracy, and even imposed upon scholars of the Universities.

The intellectual class, forced out of the political life and hence from practical thinking, took either to literature or to abstract thinking and the spinning of schemes for the liberation and regeneration of the Russian nation. The

¹ Quoted by Paul Milyoukov in *Russia and Its Crisis*, Chicago, 1906, p. 175.

² This censorship crippled the press to such an extent that during the last ten years of Nicholas I's reign (1845-1854) only six newspapers and nineteen (for the most part special) monthlies were permitted to appear in the whole empire.

center of this new intellectual activity became the University of Moscow. In its academic atmosphere the study of German romantic philosophy was diligently pursued and attempts were made to apply it to Russia's national problems.

Since Peter the Great, the Russian autocrats had not suspected that the Russian people had an individuality of their own. There was seemingly no national consciousness, no literature, no philosophy, to reflect the mind of the people. Russian authors wrote in imitation of the West. It was thought bad taste to find subject-matter in the life and work of their own people. This tendency changed after the Napoleonic wars. The emotions aroused by bitter conflict which finally was crowned by success, stimulated and strengthened the national consciousness. Poets and novelists were now proud to be Russians and turned their face from the west, which they had aped so long. Moscow became the center of the newly-born nationalism, to which its university sought to give an adequate philosophy. This new Moscovite philosophy became known as Slavophilism, and although emanating from German romanticism, it strove to become exclusive of everything foreign and to develop only strictly national ideas. This exclusiveness against Western culture was, however, not shared by all the Moscovite philosophers, and gradually another trend of thought appeared which wanted to enrich Russian culture by the achievements of Western Europe. It was called Westernism. Like Slavophilism it was at first non-political but in time it became influential in the affairs of the nation, rivaling the Slavophil Nationalists.

The Slavophiles were close students of German idealism, especially of Shelling and of the Hegelian philosophy of history. They accepted Hegel's dialectic method, and his *a priori* concept of an Absolute Reason, which it was believed

incarnated itself in the life of nations. They naturally could not follow Hegel in his conclusion that the "Weltgeist" by way of Greece and Rome had made its final appearance in the Germanic race and with it is completing the cycle of the mystical metempsychosis of the absolute. For this meant that the numerous Slavic races were left out of the historical process with no other mission than slavishly to imitate their fortunate German neighbors and intellectual masters. We may readily understand that the Moscovite philosophers, who gloried in the consciousness that their race had freed Western Europe from the Napoleonic yoke, were not willing that the Slav should play no rôle in the future development of the races. They, therefore, asserted that the people of the west are in a state of decay, and that the Weltgeist has to make another step to complete the cycle of evolution. They also asserted that the Slavic, preëminently the Russian people, are predestined to be the final bearers of the torch of enlightenment for the human race. One of the Slavophiles writes:

Western Europe presents a strange, saddening spectacle. Opinion struggles against opinion, power against power, throne against throne. Science, art and religion, the three motors of social life, have lost their force. We venture to make the assertion which to many at present may seem strange, but which will be in a few years only too evident: Western Europe is on the high road to ruin! We Russians, on the contrary, are young and fresh and have taken no part in the crimes of Europe. We have a great mission to fulfill. Our name is already inscribed on the tablets of victory; the victories of science, art and faith await us on the ruins of tottering Europe! ¹

¹ Prince Odoevsky. Quoted by Wallace, *Russia*, new ed., New York, 1912, p. 410.

The Slavophiles searched diligently for something peculiarly Russian upon which they could establish the new type of civilization which was to redeem humanity. They claimed to have found this in the Russian Greek Orthodox Church, the Autocratic Government, and the Parish Land-Commune of the Russian peasantry.

The *Greek Church*, they maintained, is a living organism of life and truth. It consists not in the number of believers, nor in the visible congregation, but in the spiritual tie which binds them together. Roman Catholicism curtails individual liberty for the sake of unity. Protestantism takes the alternative and loses its unity in its individualism. Greek orthodoxy assumes to be the only religion which remains true to the spirit of primitive Christianity, having harmoniously wedded unity and liberty by the principal of Christian love.

Autocracy, as its second peculiar institution, is not a product of conflict and brutal force, to which present parliamentary rule is but a natural reaction, as are the governments of the West. Russian autocracy was created by the free will of its citizens. The legend of the call of Rurik, the first dynast of Russia may not be true historically but it certainly is true temperamentally, reflecting the mind of the people. Thus autocracy is the "Holy Ark" of the Russian nation. The sovereign wishes but the good of the people and this makes parliamentary rule superfluous.

The *Parish Land-Commune* was called the cornerstone of all Russian institutions and was highly prized as a realization of the Utopian dreams of Western socialists, who hoped to attain to it by way of capitalism and a proletariat. The socialist ideal of communal ownership of land and of the tools of production, it was said, needed not to be attained in Russia by force. There it is a natural product having grown from the very heart of the people.

The creation of a proletariat is hence unnecessary and impossible in Russia. The spirit of Christian resignation and self-sacrifice has achieved there, what selfish Western Europe is trying to get by a bitter class-struggle. This shows, they concluded, that Russian society is based upon the principle of justice and voluntary self-abasement—immeasurably higher than the struggle principle of the “Rotten West”.¹

The Slavophiles were voluminous writers and were often brilliant. They contributed not a little to the autocratic idea, although their theories have helped to stimulate Russia's national consciousness and have aided in emancipating the Russian serf by a peaceful method. Besides this they have gathered much valuable historical and ethnographic material, which, apart from interpretation, is some of the best that exists. They have shown what are the peculiarities of Russian Orthodoxy in comparison with other Christian Confessions.² Better than any other authors they have pointed out the peculiar characteristics of the Russian people.³ They also have shown what there is in common among the various Slavic peoples.⁴ Finally they

¹ It is hardly necessary to say that these “fundamentals” of the Slavophiles are based upon imaginary premises which do not stand historical scrutiny. Autocracy in Russia has been severely shaken and will have to yield to the will of the people. The much eulogized parish-commune is in a state of decay and has since (1906) been abolished by law. In the nineties of the last century Russia entered her industrial era of capitalistic production on a large scale and her proletariat is growing daily.

² Especially A. S. Khomyakov, *Works*, vol. v-vii (Russian).

³ The best author in this field is K. S. Aksakov, *Works*, vol. i-iii (Russian).

⁴ On this subject, see Valuev, *Almanach for Historical and Statistical Information about Russia and Peoples Akin to Her in Faith and Race* (1845) (Russian).

attempted to state the differences which exist between the Romano-Germanic and the Graeco-Slavic world.¹

The Slavophiles of the period covered by the reign of Nicholas I were metaphysical in their presuppositions and their premises were untenable after the decline of the Hegelian school. The newer Slavophiles realized this and sought to re-establish their principles by the aid of sociology and of the natural sciences. Danilevsky is the most important writer of this group.

Even more exclusive than the Slavophiles were the extreme Nationalists or Russophiles who saw danger for Russian Autocracy in a mingling with other Slavs already influenced by Western liberalism. The creed of the Russophiles was expressed by Nicholas I's faithful servant, Count Uvarov, who held the portfolio of the ministry of education from 1833 to 1849. Uvarov, when entering upon his position, outlined his program to all Russian educators in these words: "Our general task consists in establishing such an education for the nation as will unify in itself the spirit of Orthodoxy, of Autocracy and of Nationalism." This formulation has since remained the Holy Trinity of Russian Autocracy; it is its alpha and its omega. Katkov, a former liberal Slavophile, advanced it through the press (in "The Moscow Vedomosty" and other periodicals), and Leontiev attempted to give it a philosophical and sociological justification. The most famous of Russian reactionaries, however, was Pobyedonoszev (1827-1907). Under two czars he dictated the policies of the government. He was the teacher and advisor of Alexander III and he wrote

¹ This subject has been exhaustively studied by V. I. Lamansky, see his doctor's dissertation, *The Historical Study of the Graeco-Slavic World in Europe* (1870). There are also some two hundred printed books, articles, etc., dealing with the Slavic world, all by the same author (Russian).

the reactionary manifesto of Nicholas II upon his accession to the throne.¹

His social and political views are the exact antithesis of Russian Progressive Westernism. He hated Western philosophy, science and civilization and dogmatically postulated Uvarov's theocratic Trinity: Orthodoxy, Autocracy and Nationalism as the only institutions which can preserve Russia in continuous safety and happiness. He fought for the preservation of ignorance among the common people, being convinced that the peasant would gain nothing from learning to read, except the consciousness of his own poverty.

The nationalistic trend had fortunately also other intellectual representatives besides the extremists Katkov, Leontiev and Pobyedonoshev. Vladimir Soloviev, although not an Orthodox Slavophil nor Russophil, is still akin to them and tries to make Russian nationalism more inclusive and synthetic.²

The oppressive policies of the rule of Nicholas I had eradicated every remnant of the Decembrist movement. However, new protests were ripening from among the intellectual classes. These protests were variously expressed in the writings of a group of thinkers who, when discriminated from the Slavophiles were generally called Westernists. Chaadaev³ was among the first to raise a voice against the sterile, deadening Russian Theocracy, ad-

¹ This document, which was pronounced personally by the czar before the representatives of the nobility, the military classes and the Zemstvos (local governments), censures the latter's ambition to participate in matters of internal government as "senseless dreams" and concludes with the significant words, "Let all know that, in devoting all my strength to the welfare of the people, I intend to protect the principle of autocracy as firmly and as unswervingly as did my late and never-to-be-forgotten father."

² For an analysis of his theories, see *infra*, pt. i, ch. ii.

³ Cf. *infra*, pt. i, ch. iii.

vocating as a remedy a yielding to the Roman Theocracy of the West. Chaädaev himself never became a Roman Catholic. The culture of the French people he seemed to have admired more than their religion, but he did not distinguish between the two, rather regarding French culture as a product of their religion.

A different interpretation was given to Western thought by Belinsky.¹ This thinker rapidly passed through the intermediate stages from a metaphysical interpretation of civilization to a positivist view of society. He first began to gather around himself what is known in Russia as the "intelligenzia". By the "intelligenzia", or intellectual class must be understood that progressive and radical wing of Russia's educated people which holds the emancipation of the common people from their misery and ignorance to be its principal task and which opposes the existing institutions of political and social control. Belinsky was followed as a leader by Herzen and Bakunin who, each in his own way, stirred the intellectuals to action.

The lifeless despotism of Nicholas broke down under its own weight. The occasion was the Crimean war. The reaction to the disaster was volcanic. The old régime was doomed to pass with the defeat of Russia's most uncompromising autocrat, Nicholas I. Alexander II, who succeeded him, promised radical reforms, and the great opportunity for the progressive elements of the Russian nation had come.

Emancipation was the cry of the day. Emancipation of the peasant from serfdom, of the citizens from the state, of the woman from patriarchal tyranny, of the thinker from authorities and tradition. There must be struggle to the end against every institution that was irrational or oppres-

¹ Cf. *infra*, pt. i, ch. iii.

sive, whether political, economic, religious or social. The new order must not only improve existing conditions, it must revolutionize society from its foundations. It must be built upon positive scientific principles. This effort to recast society scientifically called forth whole schools of sociology of which the subjectivist school is the most significant. Its theoretic aspect had its counterpart in political organizations which advocated reforms, ranging all the way from moderate liberalism to radical utopian socialism. The tremendous pressure of awakened public opinion¹ compelled the government to act. On February 19, 1861, Alexander II signed the famous Act of Emancipation whereby fifty-two million serfs were freed. This act called forth unprecedented enthusiasm among all classes. Herzen addressed the Czar in his periodical "The Bell" with the words, "Thou hast conquered, O Nazarene!" and urged him to continue the reforms by other equally revolutionary measures.

When, however, the conditions of the emancipation became known, a heavy gloom was cast over all the friends of the common people. At its best the act was but a compromise favoring greatly the great landowners,² who were allowed to exact an abnormally high price for the land they ceded to the peasants.³

¹ The extent of the awakening may be seen in the large increase in the periodical press. When Nicholas I passed away there were but six newspapers and nineteen monthlies to announce the event to a population of about ninety millions. During the first decade of the reign of Alexander II the number of newspapers increased to sixty-six and the monthlies to one hundred and fifty.

² Before the Emancipation Act only 1.7 per cent of all lands were in the hands of small landowners, the bulk of 64.6 per cent was claimed by the government, and the rest by the gentry and by syndicates.

³ The government lands were to be given over at the same rate in order not to discriminate. The rate of interest (6 per cent) on the in-

Thus from the very start the peasant was condemned to perpetual poverty. Strong opposition to these and other equally inadequate measures of the reform acts was, of course, to be expected. Bakunin and Herzen thundered from abroad against the reaction, the former preaching an immediate revolution by the rise of the peasantry. At home Chernishevsky was the recognized leader of the intellectual class.¹ It was hoped that the peasantry would not accept the conditions of the emancipation when it should become enacted (1863). Bakunin, Chernishevsky and almost all of the leaders had great faith in the revolutionary abilities of the peasant. They pointed back to the rebellions of Razhin and Pugachev, which were ably supported by the peasants. The intellectual class was to prepare and to lead the revolution which was to take place in the summer of 1863. For this purpose the secret organization, the "Great Russian" was founded. It consisted mostly of university students of both sexes who began their propaganda among workingmen, soldiers and peasants. Out of the "Great Russian" movement arose the more radical secret organization of the "Land and Liberty", which aimed at an immediate rising concurring with the Polish rebellion (1863). The region of the Volga, where Pugachev's rebellion had taken place, was chosen. A pseudo-manifesto in the name of the czar was circulated which proclaimed liberty to all classes, and granted full property rights to the peasants without payment. The soldiers

debtedness was also unusually high, and almost ruined the peasants economically. The area of land allotted to the peasants was also not large enough. After more than forty years of appropriation (1906) the peasantry owns only 24.1 per cent, or 3.5 acres per individual allotment of all privately-owned lands. The nobility's share is 52.3 per cent.

¹ Cf. pt. i, ch. iii.

were also to be freed from service and compensated by land grants. There was to be no conscription and no per capita tax, and all government officers were to be elected by the people. The manifesto stated that should the local authorities resist the enactment of the manifesto, the population was authorized to rise in rebellion. This daring feat failed at the outset and a number of the instigators were executed. This initial failure did not stop the activities of the secret societies, but it divided them into two classes. One faction favored an educational propaganda of gradual preparation of the masses for the revolution, the other faction did not believe that education was necessary since the masses were always revolutionary (Bakunin's doctrine). The peaceful propagandists formed their "organization" of 1865, which adopted for its leading principle the propagation among the peasants of the idea of nationalization of land by stirring them up against proprietors, against the nobility and the authorities in general. This was to be accomplished through teaching in day and Sunday schools, the establishment of free libraries, and the organization of societies and workshops on the communal principle, etc. The faction of the "direct action" was inspired from abroad by Bakunin and led at home by the student Nechaev,¹ a reckless, despotic fellow. The government was aroused and began a merciless persecution, especially after the Student Karakozov made an attempt to assassinate the Czar (April 16, 1866). A number of the societies were discovered, their members were tried and most of them were exiled to Siberia.

During these troublesome years also Chernishevsky, although not approving Jacobinism, fell a victim to the gov-

¹ Nechaev is known as the author of the "catechism of the revolution", which teaches methods of "direct action" and justifies any crime, including murder, if it serves the end.

ernment's policy of persecution.¹ Chernishevsky's successor in the intellectual leadership of young Russia was the young, talented Pissarev.

He is usually called the philosopher of the Russian Nihilist Movement. Denying aesthetics and every other ideal principle, he advocated an extreme realism, individualism and utilitarianism.² He did not live long enough to develop his many ingenious ideas. His influence was that of a propagandist philosopher who inspired his readers by his bold and passionate utterances.

With the passing of Pissarev and his contemporary Dobrolubov,³ Lavrov became the acknowledged leader of the populist movement. Through his sociological theory of the "rôle of the critically-intellectual individual",⁴ he

¹ Cf. *infra*, pt. i, ch. iii.

² By individualism he understands the struggle for the emancipation of personality. He boldly casts off all traditions, believing that in order to create a new mankind all old institutions must be destroyed without exception. Strength is to be the criterion in the selective struggle. He is Materialistic-Determinist and sees in the great man but a product of the historic process. Marx greatly impressed him, but he did not become an orthodox Marxist, being carried away by his individualistic interests. As a thorough-going Nihilist he saw all evil in ignorance and the only salvation was to be found in science, especially natural science. Turgenev's Basarov he recognized and acknowledged as the true type of the new Russia. Summing up the criticism of "Fathers and Sons", he says: "At present young people are carried away and fall into extremes, but in these various passions show themselves to be the fresh forces, and this mind without any outside means or influences will lead the young people on the right road and assist them in life", *Works*, St. Petersburg, 1901, vol. ii, p. 427.

³ Dobrolubov (1836-1861) belongs to this group of leaders of the progressive intellectual class. A pupil of Chernishevsky, he contributed as literary critic to Chernishevsky's periodical, the "Savryemnik" (contemporary), which was the principle medium of spreading their progressive ideas. Dobrolubov's early death was much lamented in Russia.

⁴ Cf. *infra*, pt. ii, ch. i.

inspired the revolutionary youths. He also prepared a party platform which recognizes two principles of struggle: one the struggle against the theological-metaphysical or religious concept of life by means of science, the other the struggle of the toiler against the idle-consumer, which is also a struggle for equality of opportunity against monopoly of any kind. Lavrov, who fought the conservatives and pseudo-liberals, turned also against Nechaev, Bakunin and others of the left wing who wanted a revolution without a preparatory education of the people. In his writings he stood for the principle that no means should be used that might defeat the end itself. No revolution can be realized artificially; it will be successful only when the people are ready and when other conditions are equally favorable. Revolutionary failures are regrettable, although, he conceded, they have educational value. Like most other populists' platforms, that of Lavrov accepted the peasant commune as the basic economic institution of Russia, but recommended that it be made more efficient by the education of the peasantry.

When Lavrov was forced to leave his native country, Mikhalovsky became the intellectual leader of his generation, fighting valiantly for the interests of the individual, as he expressed it in his sociological theory of the "struggle for individuality",¹ and for the preservation of the peasant commune, which he believed was best fitted to give the individual the opportunity for a many-sided and rounded development.

Parallel to this educational revolutionary movement was developing the more radical movement which advocated revolutionary or direct action, and which culminated in the assassination of Alexander II (March 13, 1881).

¹ Cf. *infra*, pt. ii, ch. ii.

After his failure to start a revolution in 1863, Nechayev was preparing to launch another in the spring of 1870. He severed himself from all factions which wanted to begin the social revolution by propaganda and urged direct action. Organization and education, he taught, will be the task of coming generations, whereas "our own task is a terrible, thorough, ubiquitous and pitiless destruction. . . . Let us unite with the world of robbers, the only true revolutionaries in Russia". Nechayev's organization was known as the "Narodnaya Rasprava". (The judgment of the people.) He demanded unreserved submission from his followers, and when one of them, the student Ivanov, refused to subject himself to his iron will, he was murdered by order of Nechayev. The arrests and trials which followed this crime put an end to the leadership of Nechayev, and with it also terminated the revolutionary plot of 1870. With the passing of Nechayev, Russian Jacobinism did not cease. Its new leader became Tkachev, one of Nechayev's followers. He opposed Lavrov's propaganda of local revolts and incited to a political revolution, if a general social revolution was impossible. He was a Bakunist and, accordingly, wanted to use revolutionary organizations as a means of disorganization and the destruction of the existing political order.

The years of 1873-74 were the period in which the revolutionary enthusiasm reached its zenith. The circle of the "Chaikovstsy" in Petrograd, to which Kropotkin, Stepnyak and other revolutionary celebrities adhered, developed a titanic activity. It culminated with the general movement of the "going among the people" which lasted throughout the summer of 1874. This movement, which has no equal in Russian history, resembled a great religious revival. The bulk of the educated class, not only youthful students but many teachers, judges, physicians, officers and

officials joined the ranks. Denying themselves comforts and undergoing many hardships, they went to preach the new liberty to the people. The result of this crusade has been variously estimated. In its proximate results it was a failure; the peasant did not respond concurrently, he often turned against his enlighteners and delivered them to the authorities. Perhaps the greatest gain was to the propagandists themselves; while they went to the people as metaphysical, utopian dreamers, many of them came back as sober positivists.

The failure of the itinerant propagandists was to be remedied by a more enduring activity which a new organization, the "Land and Liberty" society took for its objective. It was to organize permanent settlements among the villagers and among the working classes of the towns. The propaganda of the "Land and Liberty" found more ready response among the proletariat of the cities than among the peasantry. The workingmen, however, went farther; they were more radical and direct in action of self-defense against the persecutions of the government. In 1879, the "Northern Alliance of Workingmen" was organized by some of the adherents of Tkachov. These did not refrain from terrorism as an effective means in the political struggle. But true populists could not uphold the terrorist policy, and the "Northern Alliance" split off from the "Land and Liberty" party. Another party dissenting from the old "Land and Liberty" was the "People's Will" party, organized in the South (1879). It was terroristic and advocated a propaganda by deeds. It had its Executive Committee which conducted all deeds of terror and under its auspices the regicide of March 13, 1881, was accomplished.

The "Land and Liberty" party split once more in 1879, giving birth to the "Cherny peredel" (Black Land Parti-

tion) party, which along with the advocacy of the nationalization of land, attempted to synthesize the interests of the city proletariat with those of the agrarian population. Plekhanov¹ was one of the organizers of the "Black Land Partition", and attempted to adjust its principles to those of Marx, although many of the older anarchistic ideas were retained.

The persecution of revolutionists and the reaction to revolutionary propaganda in general, which marked the accession of Alexander III, made actual propaganda almost impossible. The great revolutionary waves of the sixties and seventies had spent their force, and with the exception of occasional ripples there was for more than a decade general quiet on the surface of Russia's political sea.

Most of the leaders who survived the persecution fled abroad and took to study and engrossed themselves in literary activities. In the quiet of retreat, Plekhanov eliminated from his mind all anarchistic and populist ideas and declared himself a consistent Marxist. He began the organization of the Russian Social Democracy, directing his attention primarily to the working proletariat of the cities. During the eighties Plekhanov wrote his books, which were to differentiate Marxian Socialism from the older populist socialism, *Socialism and Political Struggle* (1883), *Our Variances* (1885). Later he began his polemic against the subjectivist sociology and his attempt to establish a Marxist sociology.² Socialism was taken up by the city proletariat during the nineties. There were great strikes in mills and factories everywhere, and for the first time Russia witnessed a real solidarity of the working masses. The intellectuals soon recognized in this movement the Marxian

¹ Cf. *infra*, pt. iii, ch. i.

² Cf. *infra*, pt. iii, ch. i.

process of social evolution, and only feared that it might lose its revolutionary character and drift into trade-unionism, and political opportunism. These fears, however, proved baseless. The government which persecuted labor organizations kept their revolutionary spirit alive, and German revisionism, although influencing some leaders,¹ had not much affect upon the workingmen themselves. In 1903, the Social Democratic party of Russia was consolidated, with the exception of a few racial groups, of which the Jewish Bund was the most important. New dangers arose, however, from the left wing of the party. Remnants of the old "People's Will" party, who were absorbed by the triumphant Marxism, felt their differences keenly. They interpreted the "masses" as not limited to the city proletariat but as embracing as well the peasantry and the intellectuals. They also wanted to use more militant tactics than the peaceful strike, and to revive the terror to which soon the ministers Sippyagin, Plehve and others fell victims.

In its reorganized form this militant wing of Russian socialism calls itself the "Social Revolutionaries". A rural branch organized by them was called the "Agrarian League". Their principal intellectual leader, Victor Chernov, has given the movement its philosophical bearing.²

The agitations of these socialist groups culminated in the revolution of 1905-06, after the disasters of the Russo-Japanese war. The freedom attained by this uprising and the formation of the Duma gave opportunity to the revolutionary leaders to show their executive abilities. In this they fell short, and a general reaction followed. Many Marxists having become more moderate Liberals, are now associated with the party of the Cadets or the Constitutional

¹ As, for example, P. Struve. Cf. *infra*, pt. iii, ch. ii.

² Cf. *infra*, pt. iii, ch. iii.

Democrats. This party is nationalistic and aspires to improve conditions by constructive reforms. Paul Milyovkov and Peter Struve are its principal intellectual leaders.¹

This in brief is the general social-political background of Russian sociology. Its theories appear to be related to the various movements we have described, and they reflect the ideologies of both the social-political groups in power and those of the opposition. Sociology in Russia was at its zenith during the great reform movement of the sixties and seventies and in a lesser degree during the period of Russia's industrial development in the nineties and during the revolution at the close of the Russo-Japanese war.

In following chapters we will analyze the various schools and trends of Russian sociology, both in their chronological order and their historical setting.

¹ Cf. *infra*, pt. iii, ch. ii.

CHAPTER II

THE SOCIOLOGICAL THEORIES OF THE SLAVOPHILS AND THE RUSSOPHILS (DANILEVSKY, LEONTIEV, AND SOLOVIEV)

THE SLAVOPHILISM OF DANILEVSKY

THE Slavophil views of Russian society were synthetized and to some extent purged of their metaphysical presuppositions by Danilevsky.¹

His approach is bio-sociological. He claims to have arrived at the conclusion, both from historical study and from biological analogy, that the Russians are a distinct and a peculiar people. He does not believe that Russia has for its mission the enlightenment of all mankind, as was claimed by the older Slavophiles; according to Danilevsky, there are no forms of civilization which could be advantageously adopted by all peoples; there are but *historical types of culture* and the Slavic people represents one of them, which, in comparison with other civilizations, should be wider in its scope and more complete.

Danilevsky's theory of historical types of culture is based upon the biological proposition that there is more than a relative distinction between *genera* and *species*.² He holds that the genus man or mankind is but an abstraction; real

¹ Nikolai Yakovlevitch Danilevsky (1822-1885) was an all-round scholar. He specialized in natural sciences, was a statistician, translator, and wrote on psychological, economic and political subjects. His book, *Russia and Europe*, is regarded as classic within the wide range of Slavophil writings.

² Cf. *Russia and Europe* (Russian), 2d ed., pp. 125 ff.

are only the species of man which in history can be recognized readily by their historical types of culture. His biological presuppositions bring him into conflict with Darwin's theories of the origin of species and Danilevsky tries to defend his theory against the great Englishman.¹

By his biological analogies Danilevsky attempts to bolster up and to corroborate his rather tractarian study of history, hoping thus to give it the appearance of something natural and inevitable. We give here an outline of the sociological aspect of his theory:

There is no cast-iron rule for dividing history into various periods. The division will depend, in part, upon the views of the historian, and in part upon the character of the development itself which may be modified more or less by local changes.² Only within the one type at a time is it possible to distinguish those periods of historical movement which are designated by the words: ancient, medieval and modern history. This division is but secondary; the primary classification consists in discriminating the distinct historical types of culture from each other.³ These are the independent, original planes, religious, social, and other of historical development.⁴

We can determine the stages of development of a particular type of society whose cycle belongs to the past. We can say:

¹ In a large work, *Darwinism*, of which but two volumes appeared. The author died before its completion.

² *Russia and Europe*, p. 91.

³ The Russian original which we translate as "historical types of culture" is equivalent to the German "Kultur-Historische". This nomenclature was used by the German historian Rückert, and it is possible that Danilevsky borrowed the term from him. For the relation of Danilevsky to Rückert, see article of Bestuzhev-Rasumnik, *Russky Vyesnik*, October, 1894.

⁴ *Russia and Europe*, p. 88.

here its infancy comes to an end, here its youth, its maturity, here we see its old age, its decay; which is to divide its history into archaic, ancient, mediaeval, and modern.¹

There can then be no division of general history except into a natural system of historical types of culture or independent and original civilizations. These in their chronological order are as follows:

(1) Egyptian, (2) Chinese, (3) Assyro-Babylono-Phoenician, Chaldean or Ancient Semitic, (4) Indian (Hindo), (5) Iranian, (6) Hebrew, (7) Greek, (8) Roman, (9) New-Semitic or Arabian, (10) Germano-Romanic or European. To these could be added two American types, the Mexican and the Peruvian which perished by violence thus being robbed of opportunity to complete their development.²

Only those peoples that produced an historical type of culture were the direct promoters of civilization. The various types are to be discriminated into isolated types of civilization, like those of India and China, and into civilizations which are built successively, one upon the ruins of the other, the decaying types serving the newly-rising types as material or as a "fertilizer". Such were the civilizations of Egypt, the Assyro-Babylono-Phoenician, the Greek, the Roman and the European.³

Analogous to the comets and to the cosmic matter which moves among the planets of the solar system, there are in the world of man, besides the directly functioning cultural types or independent civilizations, temporary phenomena which disturb the existing order. "Such were the Huns,

¹ *Russia and Europe*, p. 90.

² *Ibid.*, p. 91.

³ *Cf. ibid.*, p. 92.

the Mongols, and the Turks, who having completed their destructive task of aiding the struggling civilizations to breathe their last, and of tearing asunder their remains, disappear and are again engulfed in obscurity. Let us call them the negating agents of humanity".¹

Finally there are tribes which, for various reasons, have neither a constructive nor a destructive mission to fulfill. They are largely ethnographic material, adding to the diversity and richness of those types of which they form constituents; such are the Finnic tribes of Russia. At times also decayed historical types of culture descend to this stage.²

History proves that civilizations are not transferable from one historic type to another, their rôle is merely that of stimulating, "feeding" or "fertilizing". "If civilizations are spread by way of colonization or grafted upon peoples that are making their own civilizations, then the graft does not benefit the grafted either in the physiological or in the historical sense."³ It lives on it like a parasite and its own original development also is hindered.

"The transition from the ethnic stage to the civil and from the civil to a civilized and cultural stage is conditioned by series of spurs or shocks which stimulate and support the activity of peoples along a certain direction."⁴ Such spurs and wars, competition of all kinds, and similar stimuli.

Progress does not consist in a general movement of all peoples towards one set goal. Rather it consists in working the whole field of historical life in diverse ways. Thus

¹ *Russia and Europe*, p. 93.

² Cf. *ibid.*, p. 93.

³ *Ibid.*, p. 104.

⁴ *Ibid.*, p. 117.

"the many-sided manifestation of the human mind is progress".¹

Civilizations which have developed upon the ruins of past historical types of culture, as, *e. g.*, those of Europe, have the appearance of exceptional progressiveness.² The East and Asia are "but characteristic indications of that age, in which a nation is wherever it may live".³

To nations as to all other organisms "is given but a certain lease of life, and when this is exhausted they must die".⁴ Hence progress is subject to the law of diminishing returns. "If the ethnic period is a time of ingathering, of storing for future activity, so the period of civilization is a time of expenditure . . . and no matter how great the store of energy, it must finally diminish and be exhausted".⁵

His theory of social evolution Danilevsky sums up in five generalizations or laws, which are as follows:

First law. Each family of peoples, which is characterized by a separate language or group of languages, so far alike among themselves that their kinship is immediately recognizable without elaborate philological investigations, presents an original Historical Type of Culture, if in its mental capacity it is fit for historical development and has passed its stage of infancy.

Second law. In order that a civilization capable of becoming an original Historical Type of Culture, may arise and develop, it is necessary that the peoples which belong to it shall enjoy political independence.

Third law. The beginnings of civilization of one Historical Type of Culture are not transmitted to peoples of a different type. Each type must work these out for itself,

¹ *Russia and Europe*, p. 92.

² *Ibid.*, p. 76.

⁴ *Ibid.*, p. 75.

³ *Ibid.*, p. 77.

⁵ *Ibid.*, p. 113.

even when under the influence of more or less foreign types which have preceded it or which are contemporary with it.

Fourth law. The civilization peculiar to each Historical Type of Culture reaches its plenitude, variety and richness, only when the various ethnographic elements that compose it form a federation or a political system of co-ordinate governments; presuming that they were not already assimilated in a political whole.

Fifth law. The evolution of Historical Types of Culture is nearly analogous to those perennial plants which bear fruit only once. These plants, although having an indefinite period of growth, enjoy but a relatively short period of bloom and fruit-bearing and through this exhaust once and for all their vital forces.¹

This theory of the "Historical Types of Culture" the author applies to his study of the Slavic peoples in contrast to their western neighbors. He finds among the Slavs, especially the Russians, all the elements necessary to form an independent Historical Type of Culture. According to this author also, there are four main lines of activity to which nearly all independent civilizations have contributed: These are: (1) Religion, (2) Culture proper, as science, art and industry, (3) Politics, and (4) Social Economics. All past civilizations have contributed to one or more of these factors, not one has done justice to all. In the case of the Slavs it is to be different. He says: "On the basis of analysis of the general results of activity of past Historical Types of Culture, and comparing them in part with the special characteristics ² of the Slavic world and in part with

¹ Cf. *Russia and Europe*, pp. 95-96.

² The "special characteristics" which Danilevsky believed the Slavs to possess are much the same as those recognized by other Slavophil writers mentioned, *supra*, ch. i.

those latent abilities peculiar to the Slavic nature—we may cherish a well founded hope that the Slavic Historical Type of Culture will for the first time present a synthesis of all the aspects of cultural activity. . . . We may hope that the Slavic type will be the first complete *four-basal Historical Type of Culture*.”¹

This outline of Danilevsky's views needs little comment. His Slavophil predictions are not coincident with the facts of Russian historical development.² There is still the possibility, however, that Russia may develop a relatively independent type of civilization.

Danilevsky's attempt to divide history “naturally” is commendable, nevertheless, his tenfold division is arbitrary, as is apparent from such groupings as the “Assyro-Babylonian-Phoenician, Chaldean or Ancient Semitic”. Modern study of the civilizations of the Mediterranean basin shows at least as much relative difference among these as among the civilizations of contemporary Western and Eastern Europe. The cultural achievements of humanity are the product of no people in particular. It is true that there are types of civilization, but these are not so rigidly divided as Danilevsky supposes. In their aggregate they present a multimodal curve, their independence at its best being merely relative, as all have a common base. As modern means of communication continue to develop and the nations of the world are brought closer together, this fact becomes more and more generally recognized. And there are sociologists who believe that the future will produce one federated type of civilization.³

¹ *Russia and Europe*, p. 556. Italics are the author's.

² Cf. footnote, *supra*, p. 32.

³ For example, De Graff, *On Boundaries* and Yacov Novicov in several of his works.

II. *The Russophilism of Leontiev*

Akin to the Slavophil views just examined are the social theories of Leontiev.¹

By temperament an ultra-conservative, he even parted ways with the Slavophiles who seemed to him to undermine Russia's independence by their doctrine of Panslavism.² His aim was to preserve at any cost: first, a particular kind of mystic Christianity, strictly ecclesiastical and monastic and of a Byzantine and partly Roman type; second, a firm and centralized monarchical government, and finally, the original beauty and simplicity of life in its national forms. Democracy and internationalism he regards as signs of racial decay and therefore as the worst enemies of humanity.³ His reactionary policy he justifies by a theory of social evolution which presents in itself an attempt to synthesize the ideas of Saint Simon, Hegel, Auguste Comte and Herbert Spencer.⁴

¹ Konstantin Nikolaevitch Leontiev (1831-91). By profession a surgeon, he served as an officer of foreign affairs in the near Orient, was censor of literature, editor, novelist and social philosopher. He ended his life in a monastery, little known and appreciated by his kinsmen. Volumes V and VI of his works cover his sociological writings.

² He says: "The idea of an orthodox cultural Russism is actually original, lofty and firmly official. But Panslavism "at any price" is but an imitation and nothing else. It is a contemporary European-liberal ideal, it is a striving to be like the rest—the Russians of our age must strive passionately towards spiritual, intellectual and cultural independence. . . . And then also the other Slavs will in time follow in our footsteps." *Works*, vol. vi, p. 189.

³ He says: "The leveling process brought about by the mixture of classes and the strong tendency towards shallow homogeneity, instead of the former despotic unity in an heterogeneous forcibly controlled environment—this is the first step towards disintegration." *Ibid.*, p. 219.

⁴ Leontiev claims to have arrived at this theory of social evolution independently of Herbert Spencer. He says: "Herbert Spencer was not known to me when in 1870 I wrote my essay, "Byzantium and Slavophilism." *Ibid.*, p. 52, chapter vii of this essay contains in outline his theory of social evolution.

A brief outline of his theory is as follows: "The idea of evolution is carried over from the exact sciences into the historical sphere and presents a complex concept."¹ The process of evolution in the organic world is

A gradual ascent from the simple to the complex, a continuous adaptation on the one hand to the environment of its similar and kindred organisms, and on the other hand a continuous individuation from all similar and kindred phenomena. . . . It is a continuous process from inexpressiveness and simplicity to originality and complexity . . . a gradual accretion of complex elements, an inner increase and simultaneously a continuous integration . . . so that the highest point of evolution is the highest degree of complexity, held together by some inner despotic force. This is the case not only with organic bodies, but generally with all organic phenomena. . . . With this process of evolution goes on a continuous differentiation of form in the parts as in the whole. . . . The same is found in the evolution of an animal body, in the evolution of the human organism and even in the evolution of the human mind and character.²

"All organic phenomena are subject to the same law."³
"When things begin to approach death a simplifying of the organism begins."⁴

Before the final decay the individuation of parts as of the whole weakens. The disintegrating organism becomes internally more homogeneous, is closer to its environment and more like its kindred phenomena.⁵

Thus organic and social evolution constitute a triune process following the three stages: "(1) of *primitive sim-*

¹ *Works*, vol. v, p. 188.

² *Ibid.*, p. 189. Cf. also vol. vi, p. 219.

³ *Ibid.*, p. 190.

⁴ *Ibid.*, p. 191.

⁵ Cf. *ibid.*, p. 192.

*plicity, (2) of flourishing complexity, and (3) of a secondary disintegrating simplicity."*¹

Leontiev thinks this formula is applicable also to the inorganic world. He says:

This triune process is peculiar not only to the world which calls itself strictly organic but perhaps also to everything existing in space and time. It may be characteristic also of the heavenly bodies, and also of the history of their mineral incrustations and of the character of man, it is clearly seen in the process of evolution of the arts, in the schools of painting, of music and of architecture; in philosophic systems, in the history of religions and finally in the life of tribes, government organisms, and in whole civilizations.²

The evolution of government is usually expressed in a simultaneous development of a peculiarly suitable form. Dissolution begins by the breaking-up of this form, and by its becoming more like its environment. "The form is a despotism of an inner idea, which prevents it from falling apart. To break the bonds of this natural despotism means the perishing of the phenomenon."³

Accordingly each nation has its own governmental form which in the main is unchangeable throughout its historical existence. There are, however, more or less rapid changes in its parts from beginning to end. In its development it is at first not self-conscious, and not at once to be understood. It expresses itself well only in its middle period of highest complexity and highest unity, sooner or later follows some injury to the parts of the form and after that begins its disintegration and death.⁴

¹ *Works*, vol. v, p. 197. Italics are the author's.

² *Ibid.*, pp. 193-194.

³ *Ibid.*, p. 197.

⁴ *Cf. ibid.*, p. 204.

The author concludes that, as this is the case with all nations and governments, one ought to be active like "a moving sail or a steam boiler" as the nation is approaching its heights, but after that "it is more worthy to be an anchor or a brake for a nation which is descending as down a steep mountain".¹ By this curious application of his theory of social evolution, Leontiev seeks to justify Russian despotism and to combat democracy, which he feared as a sign of approaching disintegration.

We cannot deny to the author a certain degree of ingenuity, but throughout he lacks consistency and the ability to correlate facts with a theoretic formula. His picture of Democracy is a phantom of his imagination and is not drawn from historical facts. Throughout known history Democracy has not been primarily a leveling and shallowing force. Its tendency has been rather to equalize opportunity and so to advance a natural and not an hereditary aristocracy. Probably the highest degree of complexity has been reached only in democratic society which necessitates an extensive division of labor. It has been held together not by bonds of ecclesiastical and monarchical despotism, but by the bonds of homogeneous consumption and equalization of opportunity. Whatever of truth Leontiev's theory of the three organic stages may possess, the facts of European history do not fall within his categories.

III. *The Neo-Slavophilism of Vladimir S. Soloviev*

To conclude the review of the Slavophil theories we present the contribution of Vladimir Soloviev to this trend of thought.²

¹ *Works*, vol. v, p. 208.

² Vladimir Sergejevitch Soloviev (1853-1900) was the son of the eminent Russian historian S. M. Soloviev. Vl. S. Soloviev is regarded as

P. N. Milyoukov¹ calls him the founder of Neo-Slavophilism or of the left insurgent wing of the Slavophil movement. He claims that Soloviev based this new school on the principle that the social ideals of Christianity must be realized in the social and political life of humanity, and that the Russian people united with the Roman hierarchy are best fitted to realize this ideal in a united Catholic Church.²

This premise of the older Slavophilism seems to have been difficult for Soloviev to part with, although he himself had severely criticized the Slavophiles as "idolaters of the people", because they considered the Slavic people to be endowed with ultimate truth, power and beauty.³

Soloviev is not so much of a partisan as his predecessors were. He is, however, strongly biased by religious predilections.

Sociology in his system appears as social ethics. He says: "The actual ethical problem inevitably carries us into the province which determines the current historical existence of society, or of collective man."⁴

The problem which he tries to solve is that of the interrelation of society and of the individual, or the problem of

one of Russia's most able thinkers and the creator of the first complete system of Russian Philosophy. His works are in nine volumes. His philosophical system has been summed up in a doctor's dissertation by D. V. Usnadse, "Die Metaphysische Weltanschauung Wladimir Ssolowjows mit orientirendem Überblick seiner Erkenntnistheorie." Halle-Wittenberg, 1909.

¹ In an article, "The Disintegration of Slavophilism," *Questions of Philosophy and Psychology* (Russian), May, 1893.

² In *Russia and Its Crisis*, p. 63. Milyoukov says: "Pope and Tzar allied with the prophet of their union between them; such was Soloviev's apocalyptic vision."

³ Cf. his *National Questions of Russia, Works*, vol. v, pp. 139-336.

⁴ *Works*, vol. vii, p. 210.

individuation with social control. He resents on the one hand the ideas of the moral subjectivists or individualists who regard each individual as self-determining and independent of society; on the other hand he thinks that man is more than a social animal which exists only for the sake of the group.¹ According to Soloviev, the human individual is a potentiality for realizing unlimited possibilities. He is a unique form of infinite content. The potentialities of man, dividing him off from other animals, are three peculiar psychic characteristics, the religious, the sense of pity and the sense of shame. These are the premises upon which Soloviev's whole system of ethics and of sociology is built.²

Society is nothing else but an objectively-realizing content of the individual. According to its actual purpose society is not an outer boundary of the individual but is his completion, and in relation to the multiplicity of individual units society is not an arithmetical summing-up or a mechanical aggregate. It is an indivisible unit of life, which in part is already realized and is preserved through enduring social traditions, and in part is being realized in the present by means of social activities, and which finally proceeds through a better knowledge of the social ideal towards its future complete realization.³

In the process of historical evolution, too, these three principal remaining characteristics of the socio-individual life—the religious, the political and the prophetic—correspond to three successive stages in human consciousness and in the social structure, namely: “(1) The tribal which belongs to the past and which is preserved in the family, having changed only its outer form, (2) the national-gov-

¹ Cf. *ibid.*, p. 273.

² Cf. *Works*, vol. vii, pt. i, and also pp. 480-81.

³ *Ibid.*, p. 214.

ernmental order, which dominates at present, and, (3) the universal association of man as the ideal of the future."¹

Thus society is a supplemented or widened individual, and the individual is a condensed or concentrated society. The moral historical problem consists not in creating socio-individual solidarity (for it is potentially present) but in raising it into consciousness, in transforming it from an involuntary into a voluntary entity, so that everyone may understand, accept and do the common task as his own. From the beginning man appears to be a socio-individual being, and all of history is but a continuous deepening, elevating and widening of the two-sided socio-individual life. Out of these two indivisible and correlated terms the individual is the moving, the dynamic force and society is the indirectly controlling, static basis of history. There is no necessary antagonism between the individual and society; there is but conflict, arising in individual initiative, between new and previous stages of socio-individual evolution.²

The primitive group—the clan—contains in germ all the elements, religious, altruistic and artistic, which are necessary to the realization of individual human dignity. The clan developed into the tribe, the ethnic nation into civilized society. But in every stage the right of control by the group is conditioned and relative, man continuing to develop his primary ethical characteristics towards individual dignity.³

Each human society can assure its survival and raise its dignity only by conforming to its moral norm. The moral norm or law is the sanctioning by reason of those impulses

¹ *Works*, vol. vii, p. 215.

² Condensed from *ibid.*, pp. 215-17.

³ *Cf. Works*, vol. vii, pp. 480-81.

which proceed from the three peculiar psychic characteristics of man.¹

Accordingly the crucial matter lies not in the outward preservation of institutions, be these of one kind or another, good or bad, but "in a systematic effort to improve social relations and institutions internally, subjecting them to the one moral ideal of voluntary conformity for the general good".²

Progress in its moral or historical sense consists in "an organic and indivisible unification of the highly individualized man with social control", *i. e.*, progress is the identification of man individualized and man socialized.³ It is a continuous and better execution of duties which grow out of the past but which continue to serve as a new force to move on towards the perfect goal.⁴

"Organization in its general meaning is a coördination of many means and implements of a lower order for the purpose of reaching one general goal of a higher order."⁵

The moral organization of humanity is an indivisible triune task. Its absolute purpose is determined by the church as organized piety, collectively receiving divine influence; her formal means and implements are given by a purely human voluntary beginning of just pity or sympathy, collectively organized in the state; and only the final substratum or material of the divinely human organism is found in the province of the economic life, being controlled by the principle of restraint.⁶

¹ Cf. *Works*, vol. vii, p. 481.

² *Ibid.*, p. 287.

³ *Ibid.*, p. 420.

⁴ Cf. *ibid.*, p. 433.

⁵ *Ibid.*, p. 475.

⁶ Cf. *ibid.*, p. 476.

These are the general features of the theory of society which is the basis of Soloviev's Neo-Slavophilism.¹

To recapitulate, Soloviev starts with the premise that there are three primary psychic characteristics peculiar to the human species. They are the sense of piety, the sense of pity and the sense of shame, answering to the three logically possible stages of high, level and low. Because of these psychic peculiarities man is more than a social animal. He is a socio-individual being. His progress through the various historical stages, from the primitive ethnic group to civilized society, consists in the concurrent development and unification of his individual interests and aspirations with those of the group. His highest development is as a member of a Christian brotherhood, the Catholic Church, which represents organized piety. The state protecting society is organized pity, and finally, humanity's economic maintenance is secured by organized restraint, the third peculiar psychic characteristic of man.

¹ It is also the sociological aspect of his system of ethics: "The justification of the good," which is the subject of vol. vii of his works. Most of our quotations are taken from this volume. We call Soloviev a Neo-Slavophil not because he called himself so, for he did not, but because of the organic connections of his conclusion with the Slavophil School.

CHAPTER III

THE SOCIOLOGICAL THEORIES OF THE WESTERNISTS

(CHAÄDAEV, BELINSKY, HERZEN, BAKUNIN, GRANOVSKY
AND CHERNISHEVSKY)

THE Slavophiles, who had turned away from the culture of Western Europe, emphasizing national and racial solidarity and exclusiveness, found themselves opposed by a class of thinkers who placed individual and humanitarian interests in the forefront, and who believed that Russia had much to learn from the West before it was to become a civilized nation. These thinkers were generally called "Westernists".¹

There appear to be three relatively distinct trends of thought that may be studied under the caption of Westernism. They are: (1) The theocratic trend of the thirties with Chaädaev as its representative intellect and theorizer; (2) the humanitarian trend of the forties with Belinsky as its leading exponent; (3) the populist philosophy of the sixties for which Herzen and others paved the way in the previous decade, but which is most closely associated with the name of Chernishevsky.

All these currents of thought were accelerated by Western ideas: the first had the impetus of Jesuit philosophy; the second of German idealism and French rationalism; and the last of German materialism and French positivism.

¹ Some English authors prefer to transliterate the term as "Occidentalists."

I. *The Theocratic Theory of Chaädaev*

The representative theorizer of the Theocratic phase of Russian Westernism was Chaädaev.¹ His opinion of Russia was that "it is one of those nations which, it seems, do not represent any necessary part of humanity but merely exist for the purpose of teaching the world at some time a great lesson".

According to our geographic location between the West and the East, resting with one elbow on China and with the other on Germany, we ought to unite in ourselves the two great fundamentals of knowledge: imagination and reason. We ought to correlate in our civil education the history of the whole world. But such has not been our lot. Marooned in the world we have given nothing to it, have taken nothing from it. We have added no single idea to the mass of human ideas, have given nothing to perfect human understanding, and have distorted everything which brought us such perfection.²

The root of this evil, according to his opinion, lies in the fact that Russia received its "first seeds of moral and intellectual enlightenment from corrupt Byzantium, ostracized by all peoples".³ "Our exotic civilization," he continues, "has set us apart from the rest of Europe in such a way that we have none of her ideas. . . . If our own ante-

¹ Peter Yakovlevitch Chaädaev (1793-1856) was a Moscovite gentleman of considerable erudition. His theories concerning Russia appeared in his "Philosophical Letters", the first of which when published in a Russian periodical, the *Telescop*, vol. 34, no. 15, roused the Russian nationalists to great indignation. The government exiled the publisher, and the author was declared insane and put under medical observation. Chaädaev's works are now being edited in Moscow; the first volume appeared in 1913, and contains his famous "Philosophical Letters", in French.

² Chaädaev, *Lettres sur la philosophie de l'histoire*. Works, vol. i, Moscow, 1913, p. 84.

³ *Ibid.*, p. 85.

cedents do not tie us to any other people on earth, if, in fact, we do not belong to any other people on earth, nor to any of the moral systems of the universe, we cling, in spite of it, through our social superficiality, to the occident.”¹

Chaädaev thinks that the only way for Russia to become truly civilized lies through yielding to the Roman Catholic Church and faith. He looks with great admiration upon the Roman Church, which succeeded in accomplishing the unity of Europe, something that since the schism created by the reformation, no other institution has been able to achieve.

We never dreamed that for centuries this society [the Roman Church] had formed a real federal system and that this system was not dissolved until the time of the reformation. The nations of Europe considered themselves before this deplorable event as one social body. Although geographically divided into states, they were one from the moral point of view, as for a long time there was no other public right among them than the decree of the Church.²

Medieval history is to Chaädaev a history of one great Christian people and its wars may be viewed as civil wars. Trouble began with the Protestant schism. “The breaking of the unity of thought has broken the unity of society.”³

This last statement may be taken as the basic doctrine of Chaädaev. He saw no other institution fit to establish unity of thought except the intolerant Roman hierarchy. Rome has guarded the moral and intellectual development of all former generations since the origin of things. She, therefore, should remain the unifying and

¹ *Works*, vol. i, p. 137.

² *Ibid.*, p. 106.

³ *Idem.*

civilizing force of humanity. Chaädaev hoped for the day on which the schismatic churches, in a spirit of penitence and humility, in sack-cloth and ashes, should decide to recognize their error and return to the mother church.¹

Chaädaev was admired for his bold thinking by many of the Russian intellectuals, although but few of them took him seriously. They preferred for themselves the Hegelian philosophy of history which promised them a little more than an opportunity to yield to the control of a medieval institution.

II. *The Humanitarianism of Belinsky*

Belinsky² was representative of the humanitarian trend of Russian Westernism. He was not a sociologist in the severely scientific sense of the word, but he may be regarded as a precursor of what later became known as the populist wing of the Subjectivist School of Sociology. He saw the fundamental problem of that school and tried to find a solution of it. This problem consisted in finding a principle that would establish the true relation between society and the individual. He made use of the organic view. "A people," he says, "is not an abstract concept; a people is a living individuality whose vital diversities serve one end. A people is an individual like a separate man."³

When it first arises, a people is unconscious; passing

¹ *Works*, vol. i, p. 118.

² Vissarion Gregorievitch Belinsky (1810-1848), one of Russia's illustrious literary critics and publicists, reflects in his writings the rapid changes through which the intellectual class of Russia passed. From Schelling, Fichte and Hegel he went over to Feuerbach and Marx, becoming one of the first advocates of Marxian ideas in Russia. *Works* (Russian), four volumes.

³ Belinsky, *Works*, St. Petersburg ed., 1896, vol. i, p. 337.

through all the stages of a human being it emerges into consciousness within the periods of its youth and manhood. "The beginning of the life of each people is hidden by geographic, ethnographic, geological and climatic conditions. When man passes out from his state of nature, he begins a struggle with nature, subjects her to himself and even changes her by the power of his reason."¹

Primitive groups or tribes are "a kind of infusoria of political society, powerless to take on a definite, rational form, *i. e.*, a form of government."²

Through conflict primitive tribes become increasingly self-conscious and are amalgamated into peoples. "A people becomes a state only when control, sanctioned by time, reaches formulation; then folk life receives definite, confirmed spoken or written forms, and these forms pass into laws." Hence, "the state is the highest stage of associated life and its highest and only rational form. Only by becoming a member of the state does man cease to be a slave to nature, and only as a member of the state does he appear as a truly rational being."³

In Hegelian fashion Belinsky views society as a product of opposites. He says, "Struggle is the necessary condition of life; when the struggle ends life ceases. The subjective man is in eternal conflict with the objective world and therefore with society—but this conflict is not a revolt, it is a continuous striving towards one side or the other."⁴ "Hence each man has two lives, each of which successively holds and impresses him. In the conflict of these two he finds his own life."⁵

Thus Belinsky attempts to solve the problem of the rela-

¹ *Works*, vol. i, p. 342.

² *Ibid.*, p. 343.

³ *Idem.*

⁴ *Ibid.*, p. 355.

⁵ *Ibid.*, p. 357.

tion of the individual to society. We see that he makes the individual subject to the group. Society is to him "a huge body with innumerable heads, but with one soul, with one individual I." ¹

When in later years Belinsky disavowed his allegiance to the German idealist metaphysicians and entered the ranks of the young Hegelians, he still remained true to his earlier views which made the individual a product of and subject to the group. He says: "What lives unconsciously in a people as a potentiality appears in the genius as a realization and as an actuality. A people is related to its great men as the soil is to the plant which it brings forth. Here is unity and not division, there is no dualism here." ² The source of all progress, of all advance lies not in the dualism of a people, but in the nature of man.

Belinsky, after he accepted positivism and German materialism, did not live long enough to develop these new views nor to apply them to the political and social life of his generation.

III. *Herzen, the Precursor of Russian Populism*

The thought which Belinsky seized upon in the latter years of his life was brilliantly developed by Herzen,³ the famous leader of the Russian intellectuals, who was one of the first of the group later known as the Populist or Russian Socialist School of Sociologists.

¹ *Works*, vol. i, p. 358.

² Vol. iv, p. 466.

³ Alexander Ivanovitch Herzen (1812-1870), one of Russia's most powerful writers. He lived in exile in Western Europe after 1846. He is best known through the publication of his progressive periodical, "The Bell", which played a great rôle in bringing about the great Russian reforms of the sixties. *Works*, Petrograd ed., 1905, vii volumes.

Herzen left Russia as an ardent admirer of Western Europe. He hoped that from the West would come salvation to his native country. But when after the revolutionary year of 1848, a general reaction set in, he was much disappointed. He says: "I see the inevitable ruin of old Europe. I am not sorry for anything she has, neither for her superb education, nor for her institutions. I love nothing in this world save what she persecuted; I appreciate nothing but what she puts to death."

He was convinced that Western Europe was evolving a commonality—a bourgeoisie, which he greatly disliked and which he hoped that Russia might escape. "Commonality is the ideal toward which Europe is tending."¹ "Commonality is the last word of a civilization founded upon the unlimited right of private property; it is democratizing aristocracy and aristocratizing democracy." "In a bourgeoisie individuality is wiped out, although people without individuality are bettered."²

Everywhere the hydra-headed commonality lacks discrimination, is ever ready to hear everything, to see everything, to dress in everything, to eat everything; it is that autocratic mob of *conglomerated mediocrity*, as John Stuart Mill expresses it, which buys everything and therefore owns everything; a mob which is not ignorant, but also is never truly educated.³

"Commonality is the final mode of Western civilization; alas, it is the *etat adulte*."⁴

It must be noticed that Herzen was not agitating against the bourgeoisie merely as a class, as Socialist writers commonly do. He disliked the shallowing, leveling tendency, which was introduced into Europe with the triumph of

¹ Vol. v, p. 356.

² *Ibid.*, p. 357.

³ *Ibid.*, p. 359.

⁴ *Ibid.*, p. 392.

the bourgeoisie, and which had penetrated everything, even Socialism, which was to him only a further extension of the same commonizing or leveling tendency. Herzen, the founder of Russian socialism, was at heart an aristocrat, an individualist,¹ and his theory of a "special" evolution of Russian society reflects throughout his deep-seated individualism.

He resents the imputation that since the Russians belong to the European family, they must follow, according to an unalterable physiological law, the same evolutionary process through which the Romano-Germanic peoples have passed; "there is no such paragraph in the code of physiological laws, . . . the general plan of evolution permits of unlimited numbers of variations, unforeseen as the trunk of the elephant or the hump of the camel."² Hence there are no biological obstacles to a special evolution of the Russian people. "In nature, in life, there exist no monopolies, no means by which the crossing of zoological species, of new historical destinies, and of governmental forms could be prevented. But not only the phases of evolution and the forms of customs change; there are created new nations and peoples, whose destinies follow diverse ways."³ He points to the American people as an example, and adds:

if a new soil was sufficient to make from the commingling of old peoples a peculiar characteristic nation, why should a

¹ "The goal of each generation," says Herzen, "is itself. Nature not only refrains from making generations the means for the attainments of the future, but it never even cares for the future." *Works*, vol. v, p. 187. "The individual which is the only real monad of society, has always been sacrificed to some kind of a general concept, to a collective name, to some kind of a banner." . . . "We live not for the purpose of entertaining others, we live for ourselves." *Works*, vol. v, pp. 256 and 261.

² *Works*, vol. v, p. 402.

³ *Ibid.*, p. 404.

people that had an independent development under conditions different from those of the Western nations and with other origins in the ways of life—depend upon European remnants, especially if they know in advance whither they lead? ¹

“Russia heretofore has evolved nothing of her own, but she has preserved some things; she, like a stream, reflected on the surface the shores which pressed her; she reflected them truly but only on the surface.” ² “The commune saved the Russian people from Mongolian barbarism, from the landlord of European fashion, and from German bureaucracy. The communal organization, although largely shattered, stood against interference of the state; it has fortunately lived till *the development of Socialism in Europe.*” ³

How fortunate for Russia that the present commune did not perish, that personal property did not dissolve the property of the commune; how fortunate for the Russian people that it was omitted from all political movements, from European civilization, which without doubt, would have undermined the commune and which now has reached in Socialism the stage of self-renunciation. ⁴

“The man of the future Russia will be the peasant,” just as in “France he will be the workingman.” ⁵ “The idea of a social revolution is a European idea; but the conclusion should not be drawn that the Western peoples are the only ones called to realize it.” ⁶ “In fact, should socialism prove unable to re-establish decaying so-

¹ *Works*, vol. v, p. 404.

² *Ibid.*, p. 403.

³ *Ibid.*, p. 274. Italics are authors.

⁴ *Ibid.*, pp. 274-275.

⁵ *Ibid.*, p. 275.

⁶ *Ibid.*, p. 305.

ciety and complete its destiny—Russia will complete it.”¹ “The Slavic world is much younger than the European.”² “In Russia there is nothing fixed, nothing fossilized; everything in it is in a plastic stage of preparation.”³ “The revolutionary idea of Socialism can become with us an idea of the people. Whereas in Europe socialism is taken for the phantom of disorder and terror, with us, on the contrary, it appears a prophetic vision of the future development of our people.”⁴

“To retain the commune, while giving freedom to the individual, to spread local self-government, while retaining national unity—in these lies the problem of the future Russia.”⁵ “National Russian ways of life and the science of the West, these two synthesized will become our power, our future, our prerogative.”⁶

The contribution of the Russian peasant world to future civilization consists of elements which are old, but now are rising into consciousness and are met with in the efforts of the West for economic reconstruction. They consist in these three factors:

1. The right of each one to the use of the soil.
2. Its communal ownership.
3. Local self-government.

Upon the basis of these three, and only upon them, can the future Russia develop.⁷

These quotations from a wide range of Herzen's works give us in brief his idea of the “special” evolution of Rus-

¹ *Works*, vol. v, p. 311.

² *Ibid.*, p. 315.

³ *Ibid.*, p. 317.

⁴ *Ibid.*, p. 323.

⁵ *Ibid.*, p. 320.

⁶ Collection of articles of “The Bell”. Geneva ed., 1887 (Russian), p. 454.

⁷ Cf. *Works*, vol. vi, p. 285.

sian society. It approaches at several points the Slavophil view. Of this Herzen was aware; he says:

We and the Slavophiles represented a kind of two-faced Janus: only they looked backward, and we looked forward. At heart we were one; and our hearts throbbed equally for our minor brother—the peasant—with whom our mother country was pregnant. But what for them was a recollection of the past, was taken by us as a prophecy for the future.¹

Herzen, as also some of the Slavophiles, saw no solution of the existing social problems in political revolutions or in parliamentarianism. He wanted a social, not a political, revolution. His writings, which throughout his earlier works sounded a distinctly anarchistic note, changed their temper as he grew older. In his posthumous works, especially in his letters to his friend Bakunin, we get interesting evidence of his increasing conservatism. He says: "The slowness and confusion of the historic process is maddening and is choking us; it is intolerable to us and many of us hasten and hurry others, although we know better. Is this good or not? Herein lies the whole question."² His answer is that force can bring on a premature birth but will not make the infant more perfect. A certain stage in the process of social evolution may be broken up, but this does not guarantee that existing conditions are favorable for the next stage. "I fear not," he continues. "the word *gradual*, . . . gradualness, as continuity is imperceptible to any person of reason. Mathematics is acquired gradually, why then should the generalization of sociology

¹ From Herzen's *Memoirs*. Quoted by Milyoukov, *Russia and Its Crisis*, p. 366.

² "Letters to an old friend" (1869). A. J. Herzen, Geneva, 2d ed., 1874, pp. 288 *et seq.*

be inoculated like small-pox". And then he concludes: "I do not believe in the former revolutionary ways and I seek to understand human advance in the past and in the present, in order to know how to keep up with it, and not straggle nor run ahead so far that the people will not follow and cannot follow."¹

Herzen, we have learned, hoped for a special evolution of the Russian people. His aversion to specialization of any kind, on the one hand, and to mediocrity and dilettantism, on the other hand, made him seek for a synthesis of these extremes. To have succeeded he could not claim, and so he resigned himself to the fact that the historic process cannot be accelerated or changed; the wisest way is to keep step. This comparative conservatism which marks the eve of his life remained, however, unnoticed by the fervent spirits of the younger generation who seized and cherished his revolutionary ideas alone.

IV. *The Anarchistic Theories of Bakunin*

Bakunin's² writings have little scientific value. They are extremely doctrinaire, being biased by the author's bitter hatred of existing social institutions, especially by his dislike of church and state. But he must be mentioned in this symposium of precursors because of his wide and con-

¹ *Idem.*

² Mikhail Alexandrovitch Bakunin (1814-1876), a dynamic personality expressing in himself the critical transitional stage through which Russia was passing with the rise of the bourgeoisie and the struggle for democracy. In 1840 Bakunin left Russia. He took part in almost all revolutions of that period which swept over Western Europe. Twice he was sentenced to death; he tasted Siberian exile. He is especially known by his opposition to Marx in the *Association internationale des travailleurs*, from which he was expelled in 1872. *Works* (Russian), Bolashev edition, two volumes, and French, "*Oeuvres de Bakunine*", 1895, also some in German.

tinuous influence upon the radical elements not only of Russia but also of other parts of Europe. Bakunin adheres to the organic view of society. "We must," he says, "look at human society as at any organism"; it is true that it is much more complex than a biological organism but just as natural, being subject to the same laws in addition to which it is governed by its own exclusive and characteristic laws."¹

"Each people appears as a collective being possessing physical, psychic and politico-social peculiarities, which individualize it, and separate it from all other peoples." All this is due "to an infinitely complex aggregate of an innumerable amount of very different causes, large or small, of which a part is known, while much of it remains unknown."²

Everything that exists, all beings, whatever be their nature in regard to quality and quantity influence each other, regardless of desire or consciousness, by means of direct or indirect actions and reactions. These endless actions and reactions combining into unified movement comprise what we call general coherence, life, causation.³

"This universal life creates worlds—it continues in the human realms, creating society with all its past and all its future development."⁴

Bakunin warns his readers not to interpret his words in the metaphysical sense when he says that "life is creativeness",⁵ and that man is a dynamic creative force within the human realm. He says:

What we call the human realm, has no other direct creator than man, who makes it, forging little by little from the outer world and from his own animality his liberty and his

¹ Bakunin, *Works*, Bolashev ed. (Russian), vol. i, p. 89.

² *Ibid.*, p. 91.

³ *Ibid.*, p. 91.

⁴ *Ibid.*, p. 90.

⁵ *Ibid.*, p. 99.

human dignity. He conquers it by a craving force, independent of himself, unconquerable and equally a part of all human beings. This force, this universal stream of life, is the same which we term universal causation or nature, and which appears in all living beings, plant or animal. The tendency of each individuality is to ascertain for itself conditions necessary for the life of its kind, i. e. needed to satisfy its own necessities.¹

“Within that environment which itself produces man he attains, by means of toil and thanks to his reason, his consciousness of liberty.”² “Nature itself in its successive phenomenal changes strives towards liberation. . . . A greater individual liberty appears to be an unfailing sign of perfection.”³

“Man is the most individualized of earthly beings but he also appears to be the most socialized of all beings.”⁴ Thus “Society is the natural phenomenon of existing peoples, independent of any kind of contract. It is governed by disposition and by traditional customs, but never by laws. It gradually progresses, being moved forward by impulses of individual initiative, and not by the thought and will of the legislator.”⁵

By this view of society and its moving forces, Bakunin justifies his anarchistic negations of law and government. The state, accordingly, is to him:

A huge cemetery in which occur self-sacrifice, death and burial of all phenomena of individual and local life, of the interests of those parts, which in their aggregate compose society. It is an altar upon which the real liberty and welfare of the

¹ *Works*, vol. i, p. 109.

² *Ibid.*, p. 112.

⁴ *Ibid.*, p. 132.

³ *Ibid.*, p. 131.

⁵ *Ibid.*, p. 133.

people is brought as a sacrifice to political greatness; and the more this sacrificing is extended the more the state is complete.¹

Hence the state is an abstraction which devours the life of the people; but for such an abstraction to be born, develop and continue its existence in the real world, a real collective body must exist whose interests are bound up with the existence of the state. Such cannot be the majority of the people, for they appear to be victims of the state. He concludes: "The state was always the possession of a privileged class: the priesthood, the nobility or the bourgeoisie".²

The rise of classes Bakunin traces back to the animal instinct of difference. He says: "Each species of animals subdivides into different groups and families which change under influences of geographic and climatic conditions."³ Through these external influences small groups or varieties are formed within the species which are hostile to one another and which seek to destroy one another. The instinctive hostility of animal groups the author calls: "Natural Patriotism", and he defines it as: "instinctive, mechanical and deprived of any critical attachment of oneself to the socially accepted, hereditary, traditional mode of life, and an equally instinctive, mechanical hostility to any other mode of life."⁴

"Natural Patriotism" carried over into human society (as it emerged from the animal world) and, equipped with religious sanction, became finally the government. "Thus God, or rather the fiction of God, appears as the sanction, and as the intellectual and moral cause of every slavery on earth; and the liberty of man will be complete

¹ *Works*, vol. i, p. 188.

² *Ibid.*, p. 189.

³ *Ibid.*, p. 193.

⁴ *Ibid.*, p. 194.

only when man completely annihilates the pernicious fiction of the heavenly ruler.”¹

The origin of religion Bakunin explains by man's sense of dependence upon the powers of nature. Religion “like all other human institutions has its origin in animal life.”²

This is Bakunin's account of the rise of existing institutions. What form of society does he regard as proper and beneficent?

He believes that the organization of society should be from the bottom up. Federalism is the ideal organization,³ and the goal of evolution. According to the Hegelian trilogy, Bakunin views “the centralized states as thesis, anarchy or amorphism as antithesis, and federation of the independent groups and people as synthesis.”⁴ Anarchism as the antithesis is to be attained by direct action through “the propaganda of the deed”,⁵ and by teaching that the revolution (*i. e.*, the end) sanctions the means.⁶

V. The Historism of Granovsky

As representative Westernist and precursor of later Russian sociology must be mentioned Granovsky.⁷

¹ *Works*, vol. i, p. 14.

² *Ibid.*, p. 103.

³ *Cf. Oeuvres*, vol. i, “Federalisme, Socialisme, etc.”

⁴ Bakunin's *Sozialpolitischer Briefwechsel mit Herzen und Ogarjow*, Stuttgart, 1895, p. 388.

⁵ *Ibid.*, p. 359.

⁶ *Ibid.*, p. 363.

⁷ Timofy Nikolaevitch Granovsky (1813-1855) was a close friend of Herzen and a popular Professor of History in the University of Moscow. Kareyev says of him: “Granovsky thought in terms of history, and in terms of history he made propaganda.” (N. I. Kareyev, *Works*, vol. ii, p. 40.) Granovsky, as a propagandist professor, looms traditionally as a much greater figure among the Russian intellectuals, than as an author, among those who have to content themselves with his rather meagre literary output. *Works*, ii volumes.

Granovsky combated the Slavophil notion that the people are the dynamic force in history, and along with the other Westernists he defended individual initiative and humanitarian interests.¹

His thesis is that of *the disintegration of the masses by thought*. He says: "Each people has many beautiful and deep political traditions but there is something higher than these: this is reason, which destroys tradition's positive influence on life."² Although viewing society as a static mass and the individual as the actual factor of progress, he realized man's limitations; brought upon him through natural law. The life of mankind is subject to the same laws to which is subjected the life of nature, but the law does not equally realize itself in these two spheres. The phenomena of nature are much more uniform than the phenomena of history. Constant development is not to be had in history. History has a law which must inevitably be fulfilled; but no set time is given it—it may take ten years or ten centuries. The law stands like the goal towards which man is moving, but it is not concerned, as to which road he chooses thither, nor as to how much time he may spend on the way. Here the individual is not the tool, but is an independent abettor or opponent of the historical law; he takes upon himself the responsibility for a whole line of events called forth or suppressed by himself.³

Besides his discussion on the "laws" of society and historical phenomena Granovsky was probably the first to introduce among Russian scholars the statistical method of studying history. He says: "So long as history will not

¹ Cf. his essays on the four historical characters: Timur, Alexander the Great, Louis IX, and Francis Bacon. *Works*, 4th ed., pt. ii.

² Essay in review of Mishel's *History of Cursed Nations*, 1847.

³ Cf. *Works*, 4th ed. in one volume, Moscow, 1900, pp. 26-27.

adopt the necessary statistical method, it can never be called an experimental science.”¹

As the discoveries of naturalists did away with old and harmful prejudices that obscured man's view of nature . . . so the interpretation of historical laws will lead to a like result. It will put an end to those non-realizable theories and notions which disturb the regular development of the social life. History will not appear as a past cut off from the present, but as a whole organism of life, in which the past, the present and the future are in continuous interaction.

With Granovsky we may dismiss the Westernists who belonged to the transitional stage of Russian social theory, *i. e.*, from the humanitarian-metaphysical stage to the naturalistic and positivist stage.

Apart from their methods the theories now to be analyzed are those known as Russian Populism or Russian Socialism. As we have already observed, they presupposed a special evolution of Russian Society.

VI. *The Populist Theories of Chernishevsky*

Russian populism is associated with the work of Chernishevsky, its principal theorizer, who, although he was not primarily a sociologist, is important as one of the precursors of Russian sociology.

Chernishevsky² built his theories on presuppositions

¹ Cf. *Works, op. cit.*, p. 27.

² Nikolai Govrilovitch Chernishevsky (1828-1889) is best known by his Utopian novel, "What is to be done"? He was a bold, original thinker with an encyclopedic range of knowledge. His "Notes" to John Stuart Mill's *Principles of Political Economy* are to be had in French translation. His work was prematurely curtailed by the severities of the Russian prison régime and by the Siberian exile to which he was condemned for no other offense than his advocating of some progressive ideas of society. He is considered the "Father" of Russian Nihilism. *Works*, St. Petersburg ed., 1906, ten volumes.

much the same as those accepted by the left wing of the Hegelian school of philosophy, especially as interpreted in the writings of Ludwig Feuerbach, *i. e.*, on materialism, though he is influenced also by French rationalism and positivism. To him historical and social phenomena are dialectic processes of development. He believes in but one set of laws, which controls alike the organic and the inorganic worlds.¹

Society is to him but the sum of individual lives. He says: "Aggregate life is the sum of individual lives";² and in its earlier stages is controlled by geographic and climatic conditions. But in civil society these influences become secondary. "Thus a people having entered the field of historical evolution, its occupations and customs cannot be explained by nature nor by temperament, which is a product of nature."³ Reason becomes predominant in civilized society. "Climate, soil, resources of capital, even the strength of physical force—all these are very negligible in comparison with the development of thought. Out of this development everything arises, everything clashes, even that greatness which is commensurate with it; by it only is everything upheld."⁴

Progress is nothing more and nothing less than a physical necessity. "Progress is simply the law of growth." The elements of progress in the history of society are much more complex than in the history of nature, and, therefore, it is much more difficult to observe its laws in society; but in all spheres of life law is the same. To deny progress

¹ Cf. his "Anthropological Principle in Philosophy," *Works*, vol. vi, p. 196.

² *Works*, vol. iv, p. 327.

³ *Works*, vol. iii, p. 515.

⁴ *Works*, vol. vii, p. 189.

is just as absurd as to deny the force of gravity or the force of chemical affinity.¹ "Progress takes place slowly, . . . but nine-tenths of it is accomplished in brief periods of intense activity. History moves slowly and yet almost all its advance is by leaps.² After each leap a reaction sets in, but of necessity each reaction gives an impetus to further advance."³

Great historical events are not dependent upon any one person's will, nor upon any personality. They are realized through a law as immutable as is the law of gravitation, or of organic growth. The rapidity or slowness of the process depends upon circumstances which can neither be predetermined nor foreseen. The most important of these circumstances is the rise of strong personalities, who by the nature of their activity give to the unchangeable trend of events a certain characteristic, and who hasten or retard the course of the trend; and by their superior strength give definite direction to the chaotic forces that move the masses.⁴ Accordingly, the individual appears to be but the agent of his time, but one of historical necessity. The individual, therefore, is himself subject to the demands and the standards of society. Satisfying the demands of society, man receives from it sympathy and coöperation, but when he deviates from it he arouses criticism and opposition. Yet the author does not regard public opinion as a direct force of control or of progress. He says:

Public opinion only shows the evil and the means to remedy it; but if these remedies are not applied the evil remains unchanged. All social phenomena depend upon the laws gov-

¹ Cf. *Works*, vol. v, p. 490.

² *Idem.* Cf. vol. vi, p. 87.

³ *Works*, vol. v, p. 491.

⁴ Cf. *Works*, vol. iii, p. 644.

erning society. . . . Laws only then are powerless when directed against the mere symptoms of the disease: but they are all powerful when having learned the real cause of evil the legislator changes that institution which is productive of the evil.¹

The author thinks institutions highly important social products. Thus, speaking of the institution of Russian serfdom, he says: "It arose just as naturally as later on arose the relation of hired laborer to the capitalist, . . . nothing in life comes about artificially, everything is a natural product."²

Social habits and customs become subject to civil institutions and are modified or changed by them. He says:

If we carefully survey the history of each European nation, all the so-called peculiarities are explainable by those civil institutions under whose influence they lived or live. . . . The nation changed its habits in harmony with the spirit of its institutions and laws. Events and institutions in various lands were different and, therefore, nations which began their existence with perfectly equal habits and inclinations appear at the present time entirely different.³

Customs are created by civil institutions. Laws which do not change civil institutions are also powerless over customs. But with the change in civil institutions, the customs of a people do necessarily change. The factors that change civil institutions in a nation are historical events of a critical nature.

"Progress in institutions consists in changes which are in harmony with the evolution of existing social needs."⁴

¹ *Works*, vol. iii, p. 526.

² *Works*, vol. vi, p. 4.

³ *Works*, vol. iii, p. 522.

⁴ *Works*, vol. vi, p. 91.

These quotations from a wide range of his writings are sufficient to show that the author emphasizes institutions as all important in shaping the character and customs of a people.¹

This emphasis upon institutions is easily understood when we remember that Chernishevsky wrote on the eve of and during the great social and civil reforms of Russia. He wanted to go further than the abolition of Russian serfdom. He wished his government to direct the reorganization of the Russian peasant commune in such a way as to preserve the institution of common possession of land and add to it the advantages of capitalistic production with its principle of division of labor; and yet to escape the consequent evil of reducing the individual to a tool by making him continuously do some one kind of work only, which the principle of division of labor forces upon him. He also wished to save his people from proletarianization and from the curse of unlimited aggregation of wealth and of private property. In short, he wanted Russia to leap the capitalistic era and enter directly into the era of social democracy. He says: "The evil effect of division of labor upon the economic system and upon the very organism of the working classes under the present régime is not to be doubted. . . . For human welfare the increase of production is necessary, and increase of production demands division of

¹ We must, however, not conclude that by his emphasis upon institutions Chernishevsky disregarded the interests of the individual. On the contrary, he exalted the individual's interests over everything else, he says: "Some presuppose for the state a purpose higher than the needs of separate individuals—namely, a realization of far-fetched ideas of justice, truth, etc. There is no doubt that out of some such principle it is more easy to derive rights for the state, than from that other theory which speaks only about the benefit to the individual in general. We hold to the latter; we do not hold anything on earth higher than the human individual." (*Works*, vol. iv, pp. 439-40.)

labor.”¹ Here “we have two formulas, the combination of which gives the result: the factor, which is necessary for welfare is at the same time during its development destructive to the mass of the people.”²

We have already pointed out that this paradox of the capitalistic era made Chernishevsky fall back upon the Russian commune as the one escape from the difficulty. The commune was to him neither a special product of the Slavic genius, as was claimed by the Slavophiles, nor an artificial product of the Moscovite State, as was held by some of the Westernists; he saw in the commune a survival of a primitive institution once common to all peoples, but which through historical circumstances has been retained in Russia although not in Western Europe. “But,” says the author, “in spite of the evil consequence of our slowness, . . . in the present stage of economic evolution in Western Europe, . . . this slowness becomes highly important and useful,” and he reasons that “since the highest stage of evolution equals in form the primitive stage,”³ and “since the achievement of progressive people can be adopted by primitive people without necessarily passing through all the intermediary stages, Russia can pass directly from the lowest to the higher stages.”⁴

These conclusions at which Chernishevsky arrived were identical with those of Herzen and of the populist movement in general.

¹ *Works*, vol. vii, p. 183.

² *Idem*.

³ *Works*, vol. iv, p. 331.

⁴ *Works*, vol. iv, pp. 327 *et seq.*

PART II

THE SUBJECTIVIST SCHOOL OF
RUSSIAN SOCIOLOGY

CHAPTER I

THE SOCIOLOGICAL CONTRIBUTIONS OF PETER L. LAVROV

THE populist movement inaugurated through the literary efforts of Chernishevsky and popularized by his disciples, Dobrolubov and Pissarev, culminated during the sixties and early seventies in the Russian intellectual youth "going among the people". This movement made clear two things: First, that the "people", *i. e.*, the great mass of Russian peasant folk, were utterly unable to appreciate the advanced ideas of the Russian intellectuals and emancipators. Secondly, it made clear that whatever progress was to be realized, must be achieved through the initiative and agency of an unselfish critical-intellectual class. Thus the Russian Subjectivist School took its rise.

The first and one of the most able advocates of this propagandism was Peter Lavrov.¹ We shall devote this

¹ Peter Lavrovovitch Lavrov (1823-1900), a man of noble birth, was educated as an artillery officer. He early showed interest in philosophical studies and in time devoted himself entirely to them. Having joined the Russian revolutionary ranks, he was exiled to a remote province (1868). Here he wrote his first sociological treatises, the famous *Historical Letters*, which were published under the pseudonym Myrtov. In 1870 he made his way to Paris, where he continued his work as writer on sociology and history, and as editor of much Russian revolutionary literature. His works have not been edited collectively; much of his writing is to be found among Russian periodicals under various pseudonyms as Myrtov, Dolengi, Arnoldy, Shchukin and others. His larger books, from which we shall quote principally, are: *Sketches concerning Questions of Critical Philosophy*, 1860; *Before Man*, 1870; *Civilization and Savage Tribes*, 1871; *Historical Letters*, pseudonym Myrtov, 1870, to be had in German; *Experiments in a His-*

chapter to an analysis of his theories, some of which have not lost their significance even to-day.

Lavrov's Philosophical and Methodological Presuppositions

Much misunderstanding and unnecessary criticism was aroused by Lavrov's use of the misleading terms "subjective point of view" and "subjective method". Whatever meaning these had for Lavrov's critics, what they connoted for him is apparent in the following quotation:

In sociology and in history there are truths which are as unalterable and absolute as are the truths of all other sciences. These truths are objective, they may be unknown at one epoch and discovered at another. . . . But sociology and history also contain other truths which cannot be discovered before certain epochs, not because of any objective inadequacy in the material to be known, but in consequence of the subjective unpreparedness of society to understand the question in its active setting.¹

He insists that history does not repeat itself and that the laws of social solidarity and the process of historical evolution are not something unalterable, but are themselves progressive. These are not objective truths existing absolutely and subject to revelation, they are truths which are brought out at certain stages of historical evolution and therefore are subjectively perceived by the people of a given

tory of Thought, 1876; *Problems in the Understanding of History*, pseudonym S. S. Arnoldy, 1898; *Principal Epochs* (literally "Moments") in the *History of Thought*, pseudonym A. Dolengi, 1900. (The first three books of this list are not obtainable in this country for reference; recourse was had for them to secondary sources, especially to Professor Kareyev's *Etudes*.) All of these writings were to be introductory volumes to a great encyclopedic work entitled, *The History of Thought*, which Lavrov did not live to finish. Lavrov is without doubt one of Russia's most able thinkers and scholars.

¹ Lavrov, *Experiments in a History of Thought*, pp. 92-93.

epoch.¹ Therefore it became necessary to acknowledge this important factor as a "highly necessary and fully scientific subjectivism".²

Besides his emphasis upon the kaleidoscopic changes of history which make rigid laws impossible, Lavrov also dwells upon the factors of social and individual evolution which seem to be inevitable in any study of society. He says: "Scientific structure is obtained by the co-working of two processes equally subjective, one of which takes place in the minds of the historians, and the other is the result of observing historical individuals and groups".³ But only those events are considered which contribute to the development of their (the historians') ideal, or those which mostly obstruct its realization. This selective tendency in dealing with historical facts as they make for or against a real or ideal good as conceived of by us—this development of our moral ideal in the past life of humanity—"this comprises to every one the only meaning of history, the only law of historical grouping, the law of progress".⁴ From these few quotations it is apparent that Lavrov did not mean to shirk an objective study of society in the interest of subjective standards which may more or less affect the choice of objective facts. He merely demanded the consideration of an additional fact, namely, that, besides

¹ Among others the author uses this example to make his thought clear: "Until in the laboring class there was aroused the desire to take part in public historical life in behalf of their own interests, there was no necessity for the historian to understand the past which had laid the foundation for this desire, and a multitude of facts recorded in annals and memoirs were well known, but did not enter and could not enter into a scientific understanding of history." *Ibid.*, p. 94.

² *Idem.*

³ *Historical Letters*, 2d ed., p. 34.

⁴ *Ibid.*, pp. 38-39.

the theoretical consideration of historical facts, man is bound by an ethical relation. In other words, he believed it necessary to ask not only the Aristotelian questions how? In what way? but also the questions whence? and whither? This teleological aspect of sociology seemed to Lavrov highly important, because to him, as to most Russian scholars of the time, the social sciences were to serve humanity in its struggle for happiness. The end towards which humanity should strive Lavrov did not mean to postulate *a priori*; he hoped to decide upon that after an inductive study of society, both animal and human, and thus to construct his theory of progress, basing it upon those factors which in the process of evolution seemed to have been most important for the individual and for society, and to have furthered human advancement.

The subjective point of view and the subjective method, should reveal to us the individual as the only real factor of society, and make it plain that to disregard him and his interests is to disregard the most important social phenomena.

But here we are confronted with the old vexing metaphysical questions of free will and determinism. Our author, who is a materialist with a mechanistic conception of life,¹ tries to rid himself of the difficulty by considering free will as a proximate reality, and determinism as an ultimate fact. He says: "The world of ends and means, like all other subjective phenomena, should be studied not only as a necessary resultant of mechanical, chemical and biological process subject to an unconditional determinism, but also as it is related to those peculiarities which

¹ He says: "A mechanistic system of the universe is the only one that can lead to a scientific understanding of the world, and it eliminates any concept of world purpose." *Principal Epochs in the History of Thought*, p. 971.

were conceived of as exclusively subjective.”¹ The interpretation of the historical process, by taking both of these points of view into consideration, presents both an element of inevitableness which enters into the act of volition as a condition of the will itself and also an element of the best and the highest, which has no meaning from the point of view of determinism.² The reader will note that this statement admits of a charge of dualism, but it is not our purpose here to get into metaphysical quibbling. In his study of society, Lavrov follows out these two aspects with special emphasis upon the importance of the critically-minded individual.

What is Sociology and what are its Problems?

Lavrov had definite views on the province and problems of sociology. During the years of his work, however, as was to be expected, he modified his concepts somewhat. In his earlier works he defines sociology as “the theory of the processes and products of social development”.³ This definition permits the consideration of a wide range of problems theoretical and historical. In time, however, Lavrov saw fit to narrow the province of sociology and to transfer some of the problems to other social sciences.⁴ Thus sociology becomes “the science of solidarity of conscious individuals”, i. e., the study of the “formation, growth, weakening and disintegration of this solidarity”.⁵ In another place he defines it as “the analysis or study of

¹ *Problems in the Understanding of History*, p. 111.

² Cf. *ibid.*, p. 127.

³ *Historical Letters*, p. 14.

⁴ Thus he names one branch the science of social morphology, whose problem is the evolution of social forms. Cf. *Experiments in a History of Thought*, p. 82.

⁵ *Problems in the Understanding of History*, p. 129.

the forms of solidarity among conscious individuals, of the conditions of its growth and its weakening in the various stages of development of these individuals and the forms of congregated life".¹

These definitions suggest the principal problems which Lavrov thought that sociology has to solve and upon which our author spent his energies. He saw two parallel processes moving throughout history—the growth of solidarity, and the growth of individuality. These he attempts to trace back to the simplest forms of organic life, and up through the stage in which the social animal, man, attains self-consciousness and attempts to direct his own future by applying his critical faculties. History becomes a record of the development of thought, showing the continuous attempt to reconcile solidarity or group interest with that of the individual. Society begins a positive striving to attain this moral good which he calls progress. For example, he says:

Thus sociology not only thinks it her task to understand the forms of solidarity and the processes which take place during the quantitative and qualitative changes of these forms, but also as inevitably it strives to realize the practical problem of creating such forms when understood; first so far as its actual understanding makes realization possible; secondly, by presenting elements of conviction held by individuals who have grasped the sociological meaning. The understanding of the problems of sociology not only in their theoretical interpretation, but also in their practical import, makes possible judgments by the individuals of their own behavior.²

Many of Lavrov's sociological theories are to be found

¹ *Experiments in a History of Thought*, pp. 75-76.

² *Principal Epochs in the History of Thought*, pp. 980-981.

in books to which he has given historical titles.¹ Therefore it may be of interest to know how he differentiates sociology from history. "History as a science is the comprehension of the phenomena of progress in the process of historical life, and the discovery of the laws of that order in which the phenomena of progress and of regress inevitably follow one after the other in this process."² In further differentiating this concept of history from that of sociology, he says:

The sociologist asks himself what phenomena of growth or of weakening, of widening or of narrowing, of solidarity could and ought to have resulted under given historical combinations of social forms and acquired processes of thought in a given society and at a given epoch? Which of these actually did so occur and which would inevitably have repeated themselves had the same historical conditions reappeared.³ The historian wants to know: what combination of living elements and survivals, of special problems of society, and what germs of the

¹ This is true with the exception of a few earlier works, as *Before Man and Civilization and Savage Tribes*, the gist of which, however, is found repeated and supplemented in later works, such as *Principal Epochs in the History of Thought*.

² *Experiments in a History of Thought*, p. 99.

³ Our author adds here in parentheses that such reappearance with sufficient similarity is not met with in history. Similar to the questions quoted above, which he says are to be answered by sociology, are the questions which a sociological law has to formulate. He says: "The laws which are to be sought in it (sociology) will be those laws which shall serve for the solution of the question: Under what conditions can individuals of a certain development be bound by the solidarity of congregated life of a given strength? What elements of strengthening or weakening of this solidarity are conditioned by the degree of development of individuals and by the degree of strength of their solidarity? What technical demands proceed from the understanding of the form and the strength of this solidarity for the activity of the individual in view of this strengthening or weakening?" *Experiments in a History of Thought*, p. 82.

future, does a given epoch present; also in what way did this combination finally develop into a more or less different combination from the first,—by casting off some survivals, and by calling forth and developing in its environment new germs of the future? Both sociology and history take all their material from the collective organism, but the first is analogous to the study of physiological phenomena in the province of biology, the second to the study of the law of changes of form which condition the transition of the larva of an insect into a mature animal, or the transition of the human germ into a self-directing historical personality.¹

Thus it seems clear that in Lavrov's view sociology should study the static structure and function of the social organism while history should point out those events in the life of the organism which work toward and through changes.²

We may now proceed to a study of the three fundamental theories of Lavrov. They are:

1. A theory of social solidarity or of social control.
2. A theory of individuation or of personality.
3. A theory of social progress.

1. *The theory of social solidarity*

Solidarity and its antithesis, individuality began simultaneously and have conditioned one another all along the way. "The history of mankind," says Lavrov, "had as its task the attempt to solve the problems of individualism in the best possible way, the problem which was prepared for man by the preceding stages of evolution of the zoological

¹ It would seem that what Lavrov calls history, others might call the philosophy of history. The author thinks the philosophy of history conditioned by the problem of developing a theory of progress. Cf. *Problems in the Understanding of History*, pp. 131 *et seq.*

² *Problems in the Understanding of History*, pp. 20-21.

world in its sociological relation.”¹ For the purpose of analysis we will deal with these two factors separately, although actually they are never in isolation, but from their earliest stages continually interact. First we will attempt to show how, according to Lavrov, solidarity arises.

How solidarity arises. According to Lavrov, the study of the behavior of lower organisms presents to the observer facts which strongly suggest the source of the rise of solidarity. The process of multiplication of organic beings and their interaction differentiates into two opposite processes. On the one hand, there is the formation of complex but unified individual biological organisms, and on the other hand, there is the transition of such individual biological aggregates into a society, or collective social organism, which is characterized by a psychic solidarity, and is subjected by it to certain social laws, whereby purely social organisms are differentiated from biological organisms.² The unifying force of the earliest forms of solidarity is *instinct*. The social instinct, which stimulates individuals unconsciously to form social solidarity, appears early in the zoological world, as soon, in fact, as development has passed beyond that stage in which parts of protoplasm form new nuclei by approaching each other and uniting, or by separating, and all without any cause so far as the observer can judge. “In this manner socialization of particular elements appears to take place in the first stages of the evolutionary life process.”³ This association of similars, which in the lower forms takes place unconsciously and is but very loosely held together, increases with the growth in complexity of organic life. Lavrov says:

¹ *Principal Epochs in the History of Thought*, p. 101.

² Cf. *ibid.*, p. 23.

³ *Ibid.*, p. 60.

All higher organisms were at first apparently associations or colonies of like units. This association of individual units having thereby preserved self-existence, consequently, because of its association, worked out a more or less conscious solidarity. On the foundation of similar instincts, similar habits, similar sympathies, similar interests and similar convictions, the beginnings of social organism are erected.¹

Of course Lavrov is aware that these elementary psychological processes and elementary phenomena of socialization of organic units have, in the earlier stages of organic evolution, primarily only a biological meaning, as the biological process remains in them the factor chiefly dominant. Still it is possible with more or less exactitude to ascertain here the presence of psycho-sociological phenomena. He concludes: "Perhaps in them [the organisms] there awakens a certain consciousness of likeness with other units with whom association proceeds. There appears an elementary consciousness of similar danger and of similar needs; but most probably there is a vague desire to be together, a vague pleasure of associated life."² Thus in the association of organisms, in "mutual service for mutual aid", lay the beginning of coöperation and of solidarity, for the most part apparently unconscious, but "which, afterwards, merges into consciousness".³

According to Lavrov solidarity arises in the lowest strata of the organic world, because of the response of nerve tissue to the impress of certain stimuli; it proceeds by receiving assistance and pleasure from association; association develops mutual aid and coöperation finally becomes a conscious solidarity.⁴

¹ *Ibid.*, p. 61.

² *Ibid.*, p. 64.

³ *Ibid.*, p. 65. Compare the earlier statement of Giddings, "Principles of Sociology," 1896.

⁴ At this point a question as to the author's view of evolution and heredity may be raised. Lavrov is a Darwinian; the Spencerian

Transition from animal solidarity to human society. The animal ancestors of man, according to Lavrov, having evolved during their various stages the ability to work out concepts and their combinations, the capacity for sympathetic life, the power of reasoning along reflections and instincts, finally the disposition for associated life—have transferred this heritage to man. He says: "The transitional ape-like beings, the primate apes, which developed into man, brought to him all the treasures of psychic and sociological heritage of the preceding zoological world."¹ With man, however, solidarity took on new forms, and we will now attempt to outline Lavrov's theory of their successive stages.

The first form of human social solidarity was the metronymic family. "On the basis of the primitive metronymic family," says Lavrov, "was formulated the first extensive purely human group which was the matrilinear tribe."²

This earliest natural form of social solidarity, which had to some degree also existed among animals, received new and heretofore unknown reinforcement, which goes under the name of religion. This reinforcement the author looks upon as pathological in nature but nevertheless as tremendously important as a factor in the growth of social solidarity. He says:

The firm center of pretribal society appears to have been the

formula he thinks is too far-fetched and that it explains nothing. He says: "Each element of the organic world adapts itself to the environment and transmits the results to its progeny by way of heredity. . . . The law of heredity and the law of transformation under the influence of the struggle for existence practically explain all conditions or origin, existence and disappearance of forms of the organic world." *Ibid.*, p. 28.

¹ *Principal Epochs in the History of Thought*, p. 99.

² *Historical Letters*, p. 52.

group of nursing mothers who cared for their own children and those of the tribe who needed them. But now a phantastic world of apparitions arose before the imagination of man through a general interest in one and the same object. The sources of the phantastic phenomena kept the adolescent near his mother, who had greater knowledge and whose experience in life permitted her to interpret signs more correctly. She held in custody the amulets which warranted good luck and prevented failure. The belief in *magic* bound with a new and a powerful sympathy the members of the whole group who exercised the rite collectively.¹

This new achievement, unknown to the animal world, had aided strongly in the development of the tribal form of society. It was perpetuated by imitation and the consequent rise of *custom*. Our author calls custom "the tool of solidarity".² By its aid small groups of men were merged into more stable forms of association, more lasting than any previous form. Says Lavrov:

The kingdom of custom may present itself to us as the inevitable condition of primitive social life, and as the most undesirable environment for individual persons. . . . It may be hoped, however, that in a distant future custom will cease to govern man. But this can hardly be accomplished otherwise than by developing widely the habit of critical thought and a life lived according to conviction.³

It is the nature of custom to remain unchangeable. Nevertheless it is bound to change in consequence of alterations in environment and conditions of social life which lead to new adaptations. Lavrov says: "In consequence of an unconscious accumulation of small deviations in thinking and in life from previous generations, or of an unex-

¹ *Principal Epochs in the History of Thought*, p. 170.

² *Ibid.*, p. 147.

³ *Ibid.*, p. 153.

pected inflow of people belonging to a different culture, customs change, but for each generation its new form remains an *ancient custom*.”¹ This unconscious change accounts for the various differentiations of social forms in tribal society, but all the changes have this in common, they are within the “kingdom” of custom and of real or of fictitious kinship. Lavrov views them all as belonging to the pre-historic stage, the transition from which is determined by the rise of critical thought, directing changes. The series of changes, however, does not follow a straight line. It proceeds rhythmically by means of compromise. “As soon as the principal demands of a protest are satisfied,” says Lavrov, “the mind manifests something like fatigue, and a disposition to remain on the new forms of culture just established by the protesting mind; these forms adopt more and more the characteristics of life according to custom.”² Thus a new epoch of adjustment to custom begins, again to be upset by protest and consequent compromise with the new order.

Historical forms of solidarity are those which show signs of the working of the critical mind. “The characteristic of the first period of historical life,” says Lavrov, “was the attempt to weave into one fabric all the elements of social life, cultural, political, economic, aesthetic, philosophical, religious, and later also moral and scientific.”³ Controlled by this desire early Greek philosophers sought to rid reason and life of all contradictions and to harmonize in aesthetic products all collective life, collective understandings and beliefs, collective ideals of morality and activities arising from conviction. Rome, following Greece, sought to unify the conflicts of the mind and the contradictions in life in

¹ *Principal Epochs in the History of Thought*, pp. 156-157.

² *Ibid.*, p. 183.

³ *Ibid.*, p. 291.

an elaborate legal system. In the middle ages this task was undertaken by the church through her scholastic philosophy. After the Protestant revolt there arose political systems of unification to which especially England, France and Germany were subject, although at present it has spread all over the world. The development of class solidarity as seen in the rise of the bourgeoisie was a unifying factor, since it paved the way to democracy, the final stage in the evolution of conscious solidarity.

Throughout the long process of the evolution of society the social organism struggled for existence by establishing firm forms of solidarity. Through customs, conscious interests, general convictions, general ideas, solidarity was established, and in a degree harmonized with the conscious development of the individual. "In this continuous struggle," says Lavrov, "grew, grows and shall grow the conviction that for a successful combat the best tactics appear to be the development of a solidarity between critically minded and energetic individuals, and the spreading of this solidarity among all mankind."¹

Dynamic factors of Solidarity. We shall conclude Lavrov's theory of solidarity by pointing out the factors which seemed to him to produce changes in the forms and functions of the social organism. "Where then to look for the moving force of all the various changes?" asks Lavrov. He answers by pointing to two combinations of forces. "First," he tells us, are "*the interests of separate individuals.*" Second, is *the influence of social environment.* . . . The interaction of individuals and their social forms appears as one of the most vital elements of history.² Lavrov does not disregard the factor of geographic en-

¹ *Principal Epochs in the History of Thought*, p. 42.

² *Problems in the Understanding of History*, p. 27.

vironment. He says: "for the realization of a strong and firm solidarity in human society the most directly stimulating cause was the struggle of man against a hostile physical environment. . . . In the struggle with these many enemies the brain of man early worked out inventions of thought, and created the more stable forms of social life."¹ However, geographical environment plays its part primarily and chiefly in the earlier stages of the evolution of society. Individual interests and social environment become conspicuous elements when society has entered upon its historic career. Lavrov presents two groups of interests which he thinks the principal moving forces in the evolution of social solidarity. He says: "Pleasure received from social life, the instinct of sexual approach, and parental attachment make up the first group; need of food, safety and nervous exhilaration are the second."

Besides these fundamental needs or interests there are also more or less temporary interests which are in part pathological, and interests of development (individuation); the latter two are but false efforts to satisfy the fundamental normal interests.² These interests are not equal in importance but form a kind of hierarchy, which, according to Lavrov, is as follows: At first we have an unconditional rule of custom, departures from which are accompanied by sickly nervous excitations; secondly, after this despotic sway of custom, those interests hold their own which in the continuous progress of events disclose economic bearing.

Finally, with the beginning of historic life, influences of nervous exhilaration of an idealistic nature begin to be felt. They enter the struggle cœvally with the pleasures of cus-

¹ *Principal Epochs in the History of Thought*, p. 42.

² *Cf. Problems in the Understanding of History*, p. 40.

tomary life and also with the lower political and economic interests. Struggle is carried on in the name of ideal interests, conceived of as the highest influence of belief and conviction.¹

The second complex of moving forces in the evolution of social solidarity is found in the social environment. Lavrov regards *play* as of great importance. Play, like most social activities of man, goes back to the animal stage. "In the play of animals," says Lavrov, "we observe the preparatory development of a great number of future instincts absolutely necessary for mature beings."² Play stimulates and develops the aesthetic, religious and intellectual interests of the individual. Inventiveness and imitation are most common on the play-ground. Another social factor of great importance, first recognized by John Fiske, is the prolongation of the infancy of vertebrates which, "and a great variety of plays, were the precursors of the childhood of man."³ Youth and adolescence also are great forces in promoting social solidarity. Language, custom, and religion, are preparing the individual to enter larger units of solidarity.⁴

To summarize. Solidarity emerges in the lowest strata of organic life. Association, which is pleasurable to congregated organisms, is a means of further development of solidarity. Development is continuous in the struggle against common enemies and in coöperation for satisfying similar need. The solidarity of the animal world is unconscious and is raised gradually into consciousness with the transference of the social achievements of the animal world into the hu-

¹ Cf. *ibid.*, p. 59.

² *Principal Epochs in the History of Thought*, p. 109.

³ *Ibid.*, p. 43.

⁴ Cf. *ibid.*, p. 437.

man group. The earliest form of human solidarity developed in the group of nursing mothers. It grew under newly arising religious ties of group magic, group customs, and group rites. The kingdom of custom and fictitious kinship were the strongest forces of solidarity in tribal society, which came into existence because of these forces and was maintained by them. The transition to historical or civil society was brought about by rational activity still reinforced largely by custom, progressing rhythmically by means of compromises between the new and the old. Greek philosophers, Roman jurists and medieval scholastics attempted to create a solidarity of the mind. In modern society solidarity is strengthened by statecraft and by democracy and emerges into prominence with the rise of the bourgeoisie. The forces that helped on these developments of solidarity were the interests of the individual and the influence of social and of geographic environment.

2. Lavrov's Theory of Individuality

In the preceding chapter we saw how social and political struggles in Russia were potent in bringing the strong individual to the forefront. Russian revolutionary socialism had throughout its history an individualistic aspect. Our author may be regarded as a typical "individualistic" socialist. He devotes all his mental abilities to justifying this rather paradoxical doctrine, and therefore in presenting his theory of individuality we reach to the very heart of Lavrov's sociological theorizing.

Individuality is the antithesis of social solidarity. It is, however, intrinsically related to it, which makes its consideration as a separate topic difficult. Of this our author is himself aware. He says: "When speaking of the individual, it is necessary to have in mind the social life; and

when speaking of society, individuals are inevitably in question. Nevertheless, the phenomena constituting the theory of individuality can easily be separated from those constituting the theory of society.”¹ It is clear that certain social phenomena are attributable to social and geographic environment, others to individual initiative, and others to the interaction of two or more factors. In the study of these complex phenomena, it is the problem of the theory of individuality to specify those “happenings of human activity which primarily issue from the independent individual as source”.²

Following his investigation to its earliest sources, Lavrov presents an important aspect of his theory of individuality in his study of the *genesis of the individual*. Thus he traces the individual back through the animal world and finds its source in the third fundamental phenomenon of organic life, *i. e.*, the need for nervous excitation which already manifests itself with the beginning of life,³ and which gradually increases with the growth in complexity of the organism. The earlier works of our author, especially “Before Man” and “Civilization and Savage Tribes”, are in part devoted to the study of animal psychology with a special emphasis upon the transitional stages in the development of the animal mind. Comparing the psychic life of invertebrates with that of the lower forms of vertebrates, Lavrov finds that among the latter it is possible to observe an increasing individual difference in submitting to instincts and habits. Furthermore, the vertebrates are better adapted

¹ *Sketches concerning Questions of Critical Philosophy*, p. 11.

² The first two being the need of food and of safety which are at the basis of the economic and political interests. Cf. *Problems in the Understanding of History*, p. 11.

³ Cf. *Principal Epochs in the History of Thought*, p. 44.

for training and domestication, and finally, they show the ability to herd in cases of emergency under the temporary leadership of one of their kind.¹ All this, Lavrov concludes, shows not merely a quantitative but also a qualitative difference between vertebrates and invertebrates. "Activity of mind—this is the stage reached by mammals in their psychical evolution."² In observing the complex psychic activities of primates he thinks that more often similarities are met with among animals of various species in the lower stages of development than among the higher. He says:

In animal groups, the further development progresses, according to its degree, so much more these groups differentiate among themselves according to psychic type. In its highest product the diversity of evolution in both aspects extends to individuation of psychical complexes, approaching that which we meet with among highly developed human individuals.³

Lavrov differentiates the species of animals into types. "Within the different classes, families and species, there are worked out different groupings of psychic elements—these are different types of mind."⁴ His estimate of the animal's psychic functioning is high. He sees in it almost all the characteristics which are necessary for the development of the individual.

Summing up his investigations of the animal world, Lavrov says:

The preparation of man as a reasoning and social animal in the zoological world may present itself to us in the following

¹ Cf. *Memoirs of the Fatherland*, 1870, pp. 68-80.

² *Ibid.*, p. 84.

³ *Principal Epochs in the History of Thought*, p. 59.

⁴ *Ibid.*, p. 58.

manner: We may acknowledge that the elements into which psychology differentiates the psychic activity of man have in all probability entirely similar analogies among animals. *Differentiation* lies here at the basis of the psychic life; *perception* moulds itself out of elementary undifferentiated psychic acts; concepts begin to form, also *images* and in some cases *understanding*; motives of activity appear first in the form of unconscious *reflexes*, and afterwards in a form of instinctive activity partly conscious but not sufficiently so to aim at a general end, and only later taking on the character of rational activity which is prompted by inner stimuli of sympathy, or by motives of gain, to the point of passion. There are also motives approaching *aesthetic* feelings with an aim to decorate. Finally there are signs of religious and of moral possibilities.¹

This psychical superstructure is based upon the biological principle: that the higher the animal species the less is division of labor in the social organism conditioned by physiological peculiarities of the individual, as this, for example, is observable among ants. On the other hand, the higher the animal species the less the individual is able passively and willingly to yield to society and to the existing order. Thus, according to Lavrov, the human individual, in both his biological and his psychical characteristics, was well prepared within the animal world and he continues the struggle for individuality within the group which has produced him.

The Individual a Product of the Group

Our author is well aware of the intrinsic relation which exists between the individual and the group. He says:

¹ *Principal Epochs in the History of Thought*, p. 93. Compare this array of the psychic traits of animals with the analysis of animal nature made by Professor Thorndike of Columbia University. See *The Animal Mind*.

Conscious individuals are nothing else but products of social processes, conditioned in all their acts by intellectual and affective life and by the order and life of that collective organism of which they are a part. In the separate individual is vested the life of society. No one individual can receive motives, knowledge, habits of thought and life, either as ends or as means, except in and through that society in which the individual developed and continues to live, and whose product he himself is.¹

The Historical Functionings of the Individual

The frank admission of the social dependence of the individual does not however mean to Lavrov that the historical functioning of the individual is *nil*. On the contrary, he asserts that, "in the functioning of the social aggregate the real is but the individual."² In history the first place must be allotted to conscious influences. The relative importance of these is determined by their scale or by the gradation which they hold in consciousness. Our author asks, therefore, "According to this consciousness, what processes are of predominant influence upon the genesis of events?"³ His answer is that there are three groups of processes. One emanates unconsciously from the physical and psychical constitution of man. The second is obtained by the individual, also unconsciously, from the contemporary or ancestral social environment by way of habits, traditions, customs, established laws, and political regulations, making up what may be called the general cultural form.⁴ Thirdly and finally, there are interests and

¹ *Problems in the Understanding of History*, p. 115.

² *Ibid.*, p. 114.

³ *Historical Letters*, p. 32.

⁴ The author defines culture as: "That combination of social forms and psychical activities which . . . manifests a tendency to transmit itself from one generation to another as something unalterable." *Problems in the Understanding of History*, p. 26.

inclinations that are completely conscious and which seem to form themselves independently of outside pressure and appear to be self-willed products of consciousness. They become especially powerful because they contain a new social force, "the motive from the inevitable logical conclusion".¹

Hence *the individual is a social force* which plays a rôle in history. This rôle is achieved only with his ability to view things critically. "Without criticism," says Lavrov, "there is no development; without criticism there is no perfection; without criticism of one's environment man would never have progressed beyond the animal stage."²

With the awakening of critical thought, humanity enters upon a new historical epoch. "The development of critical thought in man is the condition of understanding both the problem of solidarity and the problem of the development of the individual; and it formulates the problem of progress by harmonizing the two."³

"Upon the individuals who are enlightened rests the responsibility for disseminating knowledge and culture for the benefit of the majority, so making possible their own individuation and culture."⁴

This categorical imperative of the enlightened minority towards the majority, the author explains upon utilitarian grounds. There is pleasure in respect of one's own development, "which remains the basis of human morality and which exists only where self-respect exists".⁵

¹ Cf. *Problems in the Understanding of History*, p. 55.

² *Three Discussions on the Contemporary Importance of Philosophy*, p. 55.

³ *Principal Epochs in the History of Thought*, p. 370.

⁴ Cf. *Historical Letters*, pp. 90 et seq.

⁵ *Sketches Concerning Questions of Critical Philosophy*, 1860, p. 31.

The utilitarian interests of the individual have not of course always been ideal. More often the impelling force has been personal greed, nevertheless its influence often has been beneficent.

The individual and social forms

The developing individual, critical of all social forms, applied to family ties as well as to political unions his analytical faculties. None of the social forms proved sufficiently powerful to withstand on the one hand the greed of egotism or on the other the enlightening grasp of high ideal interests: high as compared with the narrow interests of the family and the mechanical ties of the state. He says:

The diversion of the powers of the state to the interests of particular individuals or groups, undermined the solidarity of the state. But the conflict arising from exploitation was developing in the individual a more sharply defined consciousness of his relation to the state. In accord with his egotistic interests he understood that the enlightened individual has to view the forms and functions of the state not as elements of progress but as a means for attaining ends apart from the interests of the state.¹

With the growth of the critical intellect the group became conscious of the difference between the social organism and the mechanism of the state, thus paving the way for democracy.²

The conclusion of the author is that:

Individualism does not always appear to be a progressive factor, since it has too often undermined solidarity in the interest of a class. On the other hand, it should not be regarded as only a regressive factor, since almost all achievements of conscious processes have been attained under its influence.

¹ *Principal Epochs in the History of Thought*, p. 272.

² Cf. *ibid.*, p. 273.

Everywhere and always it has been one of the most powerful of dynamic forces.¹

Thus the critical reasoning individual may be a disintegrating force destroying existing social forms, initiating and organizing new ones. He is a variant from the norm, the nucleus about which, under favorable conditions, a new type group is formed.

Lavrov shows himself aware that his theory could be attacked by those defending historical determinism, and states his relation to the determinists' position. He does not deny the existence of determinism in the world, and therefore the individual who sets before himself some desirable end must do so in harmony with the inevitable and the immovable. His end can be attained only by the use of the determined as a tool. There are eventualities which will follow without individual effort, but again there are occasions where individual initiative is imperative. The agent of historical determinism is the force of thought and the energy of volition as shown by the individual.²

Summing up Lavrov's theory of individuality we find that individuation in the lower forms of life was physiological. Developing with the psychic processes, it becomes in man relatively rational and self-purposive. The individual, although a product of the group, reacts upon the group, disintegrating old forms and preparing for the formation of new types which survive because they are adopted by the group. The individual's freedom, although important as a working force, is conditioned by the comparatively unchangeable order of the historic process.

The theses of Lavrov's sociology are: Solidarity and its antithesis, Individuality; and the synthesis of these two op-

¹ Cf. *ibid.*, p. 231.

² Cf. *Problems in the Understanding of History*, pp. 120 et seq.

posites is the whole subject-matter of his theory of progress, to a consideration of which we shall now proceed.

Lavrov's Theory of Progress

Lavrov views the theory of progress as "an application of natural laws of ethical development to the problems of sociology as they present themselves in their historical development".¹ Progress is not necessarily a continuous movement. "Necessary is only an evaluation of the historical movements from the point of view of progress as a final end."²

A theory of progress presents therefore two problems, a theoretical and a practical one. The participation in the struggle for progress appears to be a moral obligation of the individual who has grasped the meaning of it. This requires a program of action and a theory of ends to be attained. "A theory appears to underly the practice of progress as a natural process and as a real historical phenomenon, namely the application of the theory to that social order and to that social environment which calls the agent of progress to its practical activity."³

In what has progress consisted, and in what could it consist, in the history of mankind? This query Lavrov answers by saying:

The theory of progress presents three questions which have to be put in the following order: (1) On the basis of contemporary data of biology, psychology and sociology, in what could progress consist in human society? (2) On the basis of classified and investigated historical material, in what have consisted the various phases of historical

¹ *Historical Letters*, p. 294.

² *Ibid.*, p. 296.

³ *Ibid.*, p. 308.

progress? (3) On the basis of society sufficiently near to be observable by us, on the basis of the various existing groups of rational activity, taking also into consideration the historical origin of the contemporary order and the principal phenomena of progress in history, in what does a social progress possible for our time consist?¹

The achievement of progress, obligatory upon every enlightened individual will depend upon the answers given to these three queries.

In order to answer the question, in what *could* progress consist, it becomes necessary first of all to define the nature of progress. Lavrov believes that there are two processes which constitute the factors of progress, that they seem to oppose each other, and that in history have often done so. He says:

Before us is the growth of personal thought, with its technical inventions, with its scientific achievements, with its philosophical constructions, with its creations of art and with its moral heroism. Before us also is the solidarity of society with its principal incitement, "each for all and all for each" to all the necessities of life and development, from each one all his strength for the work of social benefits, for social good, for social development.²

If, then, the process of conscious individuation is a factor of progress, conditions favoring further individuation ought to be socially approved. On the other hand, strong social ties are necessary to the welfare of the individuals that compose the group. Therefore whatever furthers social solidarity is also a factor of progress. Society will be ideal when its units have like interests and like

¹ *Historical Letters*, p. 332.


² *Ibid.*, pp. 332-333.

convictions, live under equal conditions of culture, exclude as far as possible all disturbing elements and forbid all modes of the struggle for existence among themselves.

Picturing thus the two phases of society, Lavrov inquires whether individuation may not be possible without the exploitation of the group and whether the enlightened minority has a right to live at the expense of the majority. His answer is that,

the truly progressive development of individual thought is realized only when the development is directed towards a consciousness of solidarity between the more developed individuals and the less developed groups, and is directed also towards an alteration of social relations favorable to the lessening of inequalities in the development of members of a homogeneous society. The true development of the individual can take place only in a developed group of men, under the interaction of the social elements. . . . In a healthy aggregate, individuals develop at the expense of other individuals by means of an active coöperation of all those who are themselves on the path of development.¹

“Facts of history,” says Lavrov, “show that there are no uncompromising contradictions between a strong social bond and a strong mental activity within society, and that individual thought can work constructively . . . in the direction of solidarity between the developed individual and society.”² Progress, therefore, is possible only when “into the convictions of the individual in a developed minority there enters the consciousness that his interests are identical with the interests of the majority in the name of the durability of the social order.”³ On the basis of these require-



¹ *Historical Letters*, p. 335.

² *Ibid.*, p. 336.

³ *Ibid.*, p. 339.

ments, progress becomes "the growth of social consciousness, in so far as it leads to the strengthening and widening of social solidarity; and it is a strengthening and widening of social solidarity, in so far as it rests upon the growth of the social consciousness."¹

The agent of progress is the developing individual upon whom progress depends. The individual discovering the laws of solidarity applies them to his environment and reshapes that environment according to his ideal. Throughout history the enlightened minority has done little to advance progress. It has used its superiority primarily for selfish ends. But the few who have lent themselves to the welfare of the group have done so everywhere with due attention to local interests, following these general practices:

. . . changing the forms of distribution of social forces, especially the forms of distribution of wealth, in harmony with existing conditions of production and exchange; utilizing existing customs and legal forms of social organization; taking into consideration different existing conquests of scientific thought, the structures of philosophic thought, the types of thought in art and the ideals of moral thought; accomplishing these changes in the direction of the greatest strengthening and widening of social solidarity and of the largest growth of social consciousness; finally strengthening the accomplished changes by political forms in better harmony with the accomplished change, strengthening them with those ideal products of science, philosophy and art which best justify the change, and incarnating into actual life those moral ideals which correspond to the respective healthy needs of man.²

The author assures us that only in this wise could progress have been possible in human society. From this viewpoint he asks the next question: In what do the real phases of

¹ *Historical Letters*, p. 339.

² *Ibid.*, p. 350.

historical progress actually consist? The answer to this question is found in the history of civilizations, whose problem it is "to show how the critical thought of the individual transforms the culture of societies, by striving to carry into their civilizations truth and justice."¹ This problem our author attempts to solve in his great work, "The Principal Epochs in the History of Thought". Here he searches through the wide range from animal and primitive tribal society to present industrial society and the rise of democracy. He shows how, out of the zoological and prehistoric periods man emerged as a reasoning being, but conditioned in his activities by strong custom, whose roots were deep in animal instincts. He was a being for whom no solidarity and no individuation could exist as conscious motive. But presently on the basis of individualism and of conscious interest in events which themselves were more or less conditioned by a conscious grasp of interests, there developed a hierarchy of life's ends which called forth a further development of them but was checked by a lack of motives to stimulate struggle against survival from the world of established custom, and against occasional fads or modes. As one of these historical forces predominated, so was one or the other of the forms of development conditioned. Solidarity was confined to particular groups. Universal solidarity has met less favorable conditions in civil societies than in the period of the kingdom of custom; the animosity of group with group grows deeper with the efforts of each to strengthen its own inner solidarity. New historical periods have begun within small groups of intellectuals, which have desired their own development. These groups have worked out critical thought, and their first product has been two new historical forces: first, a personal conviction as a product

¹ *Historical Letters*, p. 352.

of the development of the individual in the direction of service to ideal and not to egotistical interests; and second, a universalistic conception of the unity of mankind. The group of critically intellectual people has been, and probably will remain, relatively small. The majority will still be directed by its selfish aspirations, by habit and by the mode. The elite group will be large and strong enough to become an example to be imitated and thus to create the mode which all will want to attain to, and the intellectual class that all will wish to belong to.¹

Lavrov is thus brought to the third practical question, namely: In what consists the social progress possible for our time? To this he gives no definite answer, believing that not books but experiences of life have here to decide. However, from his wide range of writings upon practical questions, one may infer that the principal task is to achieve a reconstruction of the existing economic order and political forms according to the socialist program. Also, philosophical systems, types of art and ideals of morality must be construed so as severally to lend their assistance.

Lavrov called himself a socialist, but he was not a Marxist. Although holding the economic factor an important one, he was no economic determinist. His socialism was based upon ethical considerations rising out of his social imperative.²

We have seen that Lavrov expects from the sociologist a formula of progress; from the historian he demands to know how far the ideal has been realized; and from the enlightened individual and the social reformer, he demands changes in society to bring it closer to the goal established by sociology.

¹ Cf. *Principal Epochs in the History of Thought*, pp. 995 et seq.

² Cf. *supra*, p. 108.

To recapitulate tersely: Lavrov sees social progress in the development and strengthening of solidarity, so far as it does not hinder conscious processes and motives in the rational activity of individuals. Again, social progress consists, in like manner, in the continuous development of the conscious processes and rational activities of individuals, so far as it does not hinder the development and the strengthening of solidarity among the largest possible number of individuals. Therefore, *progress is a harmonizing and synthetizing of the social forces of solidarity and individuality.*

In estimating Lavrov as a sociologist, one must credit him with contributions which before or after him were or have been made independently by others, preëminently by American sociologists. Lavrov's system shows the influence of Kant, Hegel, Comte, Proudhon, Buckle, Darwin, Spencer and Marx. Lavrov applied Kant's criticism, which lacked historical background, to Comte's positivism, which was historical but lacked the criticism that was valuable in Kant. Darwin's and Spencer's evolutionism he sought to reconcile with the historism of Comte, Hegel, Buckle and others. He has hardly succeeded in accomplishing an altogether satisfactory synthesis; especially is he weak in the epistemological formulation of his premises. Still to him belongs the honor of having been among the first to attempt this synthesis, which since has quite generally been attempted by others. He was also among the first to show the fallacies and inadequacies of biological analogy in sociology and to seek to base sociology upon psychology and ethics.

Thus Lavrov adopts a social imperative which reminds one of Kant's formulations, although he tried to strip it of its idealistic premises.¹ His emphasis upon the criti-

¹ Cf. *supra*, p. 27.

cally-minded individual as a social power and as the creator of new types and standards was strongly resented by his contemporaries, because of his unfortunate use of such terms as "subjective method" and "subjective point of view". Still he did not mean by these anything more than Professor Lester F. Ward meant by the term "anthropoteleological method". With all his merits as an independent thinker and tireless investigator, Lavrov was a child of his time. His early philosophical training was Hegelian, and the Hegelian scheme of trilogy is easily discernible in all of Lavrov's works. His sociological concepts are three: "Solidarity" is the thesis, "Individuality" is the antithesis, and "Social Progress" is the synthesis of the former two. It is interesting to note in passing that his critically-minded individuals as agents of social progress are those young Russian revolutionists who made up his following.¹

Lavrov's sociology is truly Russian, because it was stimulated and conditioned by the social and political movements in the Russia of his day. Its purpose was to justify the progressive elements of Russia in their struggle against autocracy, and also to supply his followers with a program which was scientifically sound. Apart from these tractarian tendencies, there is much of lasting value in Lavrov's work, which ought to find its deserved recognition.

¹ A faction of the Russian revolutionary propagandists named themselves "Lavrovtsy", *i. e.*, Lavrov Followers, and were in opposition to the anarchistic Bakunists and also to those Marxists who resented the subjective view.

CHAPTER II

THE SOCIOLOGICAL SYSTEM OF N. K. MIKHALOVSKY

WHAT might be called the "Sturm und Drang" period of Russian history called into life the Russian subjectivist school of sociology. To Lavrov, as we have seen, belongs the honor of priority in this school. The writings of Mikhalovsky,¹ one of Lavrov's contemporaries are not less important and have had a wider circulation. He is one of the few Russians who may be credited with having developed a sociological system of his own—a system which has not heretofore, been brought under the covers of one specific sociological work, but which must be collected and deduced from his miscellaneous writings. This chapter is an attempt to make the social-philosophy of Mikhalovsky accessible to the student of sociology.

Mikhalovsky was recognized and generally feared as a critic and publicist. For almost half a century he followed this dangerous profession without meeting the fate of his less fortunate colleagues, Chernishevsky, Lavrov, Kropotkin, and many others who were exiled. Because of this con-

¹ Nikolai Konstantinovich Mikhalovsky (1842-1904) received his education at the St. Petersburg School of Mines. As early as 1860 he began his literary career, contributing to many of the principal periodicals published in the Russian capital, such as the "Otechestvennyie Zapiski" and the "Russkoye Bogatstvo." He enjoyed unprecedented popularity, which he successfully maintained to the end of his days. His sociological and ethical theories shaped the thinking of his generation in Russia, and he was generally acknowledged the leader of its populist movement. His writings have an encyclopedic range, filling, in the most recent edition, ten large, double-column volumes.

stant danger, Mikhalovsky developed the art of expressing his opinions in an indirect way. Thus his own sociological theories are to be found in essays analyzing and criticizing the theories of Darwin, Spencer, Comte, Mill, and others. In common with other writers of the subjectivist school of Russian sociology, Mikhalovsky held that the struggle for individuality was of the greatest importance.

Mikhalovsky's Philosophical and Methodological Presuppositions

Philosophically, Mikhalovsky is a radical positivist and an empiricist. He follows Hume as corrected by Mill. Comte also influenced his thinking. Mikhalovsky says: "With both factions of Comte's disciples I agree in acknowledging the principle postulates of positivism in regard to the limits of the knowable."¹

While rejecting every imperative, whether it be Kant's, Lavrov's, or any one else's, Mikhalovsky nevertheless believes in the necessity of a strictly ethical relation among social phenomena. In fact, he believes this to be his principal problem: the reconciliation of the abstract truth with concrete truth, *i. e.* with truth socially evaluated. He says: "I have never been able to believe it impossible to find a view wherein abstract truth and concrete justice could go together supplementing each the other."² Elsewhere he says:

This system of reconciliation between the abstract good and the concrete good, requires a principle that not only may serve as the directing factor in the study of the objective

¹ Mikhalovsky, *Works*, iii ed., vol. iv, p. 99.

² Vol. I, p. v. The Russians have two words to express the concept truth. *Istina* is abstract truth in the absolute sense, *pravda* is applied truth in the sense of justice. Mikhalovsky makes use of the expressions, *pravda istina* and *pravda spravedlivost*.

world, thereby answering the scientific questions that naturally arise in every man; and as a directing factor in practical activity, thereby answering queries of conscience and of ethical evaluation, which also naturally arise in every man; but which also must finally accomplish these things with such power that the proselyte must strive with religious zeal towards that end which the principle of the system reveals as true happiness.¹

This system which he calls the *pravda* system gives but little space to the epistemological aspect of phenomena. Like Spencer, Mikhalovsky is agnostic about the nature of things. His *pravda* system he applies principally to social and ethical phenomena and he postulates as the final criterion of judgment the individual and his interests. He says:

In all political questions you must make the focus of your reasoning not the interests of the nation, not the government, not the commune, not the province, not the federation, but the individual. The individual is the center from which the rays of truth will interpret to you the meaning of that or any other social bond. You will not get confused by the historic kaleidoscope if you will remember that all psychic processes take place within the individual and only within the individual. Only the individual receives impressions, perceives, thinks, feels, suffers, and enjoys.²

He maintains that all mental processes take place within the individual, but recognizes that the individual is limited on the one hand by nature and on the other by the historic trend of things. "It is generally acknowledged that man can attain only to relative truth. He attains to the elements of truth through the medium of his five senses; had he less or more, the truth would appear differently to him."³ How-

¹ Mikhalovsky, *Works*, St. Petersburg, 1896, vol. iv, p. 405.

² *Ibid.*, p. 460.

³ *Idem.*

ever, this relative truth possesses in practical life an absolute value because it fills the compass of man's possible attainment. In addition to these natural limitations, peculiar social limitations are added by the historical trend of things. "Tell me," says Mikhalovsky, "what are your social bonds and I will tell you how you look at things."¹ Dismissing absolute truth as unknowable, he strives nevertheless for what he calls human truth. He says: "Truth is that which satisfies the mental cravings of man."² Thus it seems clear that the basis of his *pravda-system* is the human individual.

The Methods of Sociology.

Mikhalovsky's sociological method grew out of his philosophy. "Is it," he asks, "scientifically commendable to eliminate the teleological aspect from sociology? Can the objective method alone give sociology sufficient results?"³ His view is that elimination of the teleological idea would silence talk about "progress" and that there would be no distinction then between development and disintegration.⁴ A purely objective attitude seems impossible and undesirable. When the nature of phenomena permits of an examination of the whole process subject to investigation, by any man who has sufficient information, the objective method is used; but where for the verification of the investigation, besides the objective facts an evaluation of facts is needed, the subjective method must be used.⁵ Besides this Mikhalovsky believes that the very nature of man renders an unbiased attitude towards facts impossible.

¹ Mikhalovsky, *op. cit.*, p. 405.

² *Cf.* vol. iii, pp. 330-354.

³ Vol. i, p. 55.

⁴ *Cf. ibid.*, p. 132.

⁵ *Cf.* vol. iii, p. 401.

Previous experience, whether conscious or unconscious, and the moral character of the investigator inevitably determine his judgment.

Thus Mikhalovsky approaches the study of social phenomena in much the same way that Lavrov did. The criticisms brought against Lavrov's methods apply therefore to those of Mikhalovsky.

Mikhalovsky rejects the principles of analogy in the study of social phenomena; he considers them misleading. However he reserves the right of comparison of social phenomena with certain biological phenomena because of the many points of contact existing between sociology and biology.¹

The Province of Sociology and its Relation to the Sciences

Sociology was to Mikhalovsky the science of the laws of intra- and inter-group relations and of the relations between group and individual. He says: "Sociology can never persist unless its object becomes the discovery and modification of the laws of inter-relation among the various forms of group life, and the relations of these forms to the human individual."² He accepts Comte's classification of the sciences which he regards as one of the greatest philosophical contributions of all time.³ But he differs from Comte in viewing psychology as an independent science, building his sociology largely upon its principles.

Social phenomena, he maintains, are governed by specific laws. This however does not mean that sociology is unrelated to other sciences.

Sociology as well as biology deals with the struggle for existence. It points out for us the direction the struggle takes

¹ Cf. vol. i, p. 378.

² Vol. vi, p. 299.

³ Cf. vol. iv, p. 99.

under the influence of coöperation. If several types of coöperation co-exist, the relation of one to the other, as well as their combined influence should be studied. The sociologist observes these influences not only in human society, but also in animal societies.¹

Thus sociology not only receives from other sciences but in turn contributes to them; for example, the sociological analysis of the laws of coöperation aided in the understanding of changes in the biological structure of animal organisms.

Statistics are indispensable to sociology. But because of the insufficiency of material obtainable under existing methods, they are far from satisfactory. Mikhalovsky significantly warns his readers that "if the statistician forgets that his laws are but empirical laws applicable only to those conditions of time and place whence they have been deduced, an unjustifiably fatalistic attitude of mind will be produced because of the meagerness and limitation of the facts obtained as a basis for the laws."² Statistical conclusions, because constituting a purely inductive process, ought to be supplemented, Mikhalovsky thinks, by deductive methods to such extent as the complexity of the social phenomena may require.

With these philosophical and methodological presuppositions well in mind we may now proceed to an analysis of Mikhalovsky's principal thesis, to which all his other sociological writings are subordinated. An exhaustive examination of his many writings results in the following analysis of Mikhalovsky's Theory of Sociology, which may be considered under the general heading of:

¹ Vol. i, p. 381.

² *Ibid.*, p. 374.

The Theory of the Struggle for Individuality

1. The relation of the Spencerian and Darwinian theories of evolution to the theory of the struggle for individuality.

2. The biological aspect of the theory of the struggle for individuality.

3. The psychological aspect of the theory of the struggle for individuality.

(1) The individuating process and the functions of the hero and of the mob.

(2) The individuating process and the function of love.

(3) The individuating process and the function of religion.

(4) The individuating process and the functions of libertinism and asceticism.

4. The economic aspect of the theory of the struggle for individuality.

(1) The individuating process and the functioning of division of labor.

(2) The individuating process and the functioning of Russian economic institutions.

5. The historical aspect of the theory of the struggle for individuality.

1. *The Theory of the Struggle for Individuality in its Relation to the Spencerian and Darwinian Theories of Evolution.*

Mikhalovsky began his sociological theorizing by a critical analysis of the Spencerian theory of evolution as applied to social phenomena.¹ He denies the validity of Spencer's law of evolution especially as applied to the evolution of society. He says, "Spencer's two fundamental laws (of

¹This work is entitled, *What is Progress?* It appeared in 1869 and is placed in vol. i of his collected works. It is also to be had in French translation.

integration and of differentiation) are not sufficient to explain evolution as a transition from homogeneity to heterogeneity. Therefore the generalization of Spencer does not work out in the field of experience, it does not formulate any general and evident fact which can be taken as a cause for evolution."¹ Again, he believes Spencer's theory to be inconsistent in its relation to the individual and to society. "Spencer," he continues, "who likes to escape the teleological meaning of progress, had nevertheless to admit in his course of observation the necessity of evaluating the individual and the group."² Spencer's theory, however, at its best shows but the continuity of change without regard to human happiness as an end. If society as an ideal unit, develops like an organism from a homogeneous state to a heterogeneous, from the simple to the complex, "What," asks he, "happens at the same time to the actual individual,—the member of society? Does he experience the same process of development as the type of organic progress?"³ Mikhalovsky points out that according to the Spencerian formula the differentiation of society is possible only at the expense of the individual. While society is advancing from homogeneity to heterogeneity the indivisible parts composing the social organism have changed from heterogeneity to homogeneity. Thus, for example, the savage man utilizes all his faculties, mental and physical, but this is not the case in a society which is based upon minute division of labor. Primitive man as a member of a homogeneous society is a complete individual, an individual in which the mental and physical aspects are in mutual harmony. Mikhalovsky concludes:

In the homogeneous mass of primitive society the indivisible

¹ Vol. i, p. 29.

² *Ibid.*, p. 32.

³ *Idem.*

units of society were heterogeneous in so far as this was possible under the given condition of time and place. They were complete bearers of their culture; but with the transition of society from the homogeneous and complex began the destruction of unity of particular individuals and their transition from the heterogeneous to the homogeneous.¹

The idea of a social organism he held to be not only fictitious in principle but also impossible of practical realization. "In an organism," he says, "the whole, not the parts, is suffering or enjoying itself; in society, on the contrary, only its parts are conscious, therefore there is no similarity between society and organism."² Accordingly: "Society is not an organism, but a coördination of indivisible organisms. It consists not of organs specially predetermined for one or another function, but of indivisibles, which have all organs and therefore execute the sum of functions."³ Mikhalovsky believed that if society could be reduced to an organism it would be its destruction. He says: "If in the struggle for existence society becomes an organism, it, like all organisms, must be limited as to the length of its life. Its doom is inevitable. But if individuality conquers, society does not become an organism, and thus it does become practically immortal."⁴ Mikhalovsky does not deny that society is changing like a physical organism, but he asserts that the indivisible parts of society are changing in a direction opposite to that of a physical organism. The differentiation of indivisibles (i. e. men) and the differentiation of organs in a physical organism were brought by Spencer and his school under a common denominator. Mikhalovsky, on the contrary, regards

¹ Vol. i, p. 34.

² *Ibid.*, p. 54.

³ *Idem.*

⁴ Vol. i, p. 573.

them as mutually exclusive phenomena to be in eternal and inevitable antagonism.¹ This opinion of Mikhailovsky was to become the cardinal factor in his whole theory of the struggle for individuality.

Dismissing Spencer's theory of evolution on the basis of this criticism, he proceeds to substitute another formula of evolution, or progress. This reads as follows:

Progress is the gradual approach toward integrality of the indivisibles, and thus to the sub-divided and re-divided division of labor among men. Whatever retards this movement is immoral, or unjust, or harmful, or unwise. Whatever diminishes the heterogeneity of society is moral, or just, or wise, or useful, nothing else: this same act is increasing also the heterogeneity of the separate members.²

Like many other Russian thinkers he disliked Darwinism because of its anti-democratic and plutocratic interpretation by the bourgeoisie of Western Europe.³

The principles of differentiation, of variation by means of adaptation, and of competition, or struggle, are frequently carried over from the realm of biology, as interpreted by Darwin, into the realm of sociology. Mikhailovsky resents the practice, thinking it an arbitrary use of biological laws in sociology. He attempts to show that the principle of adaptation is not necessarily a progressive phenomenon within the limits of differentiation, because "adaptation always helps the practical type at the expense

¹ Cf. *ibid.*, p. 149.

² *Ibid.*, p. 150. For a more detailed comment upon this formula, cf. the next section on the biological aspect of the theory of the struggle for individuality.

³ Cf. his essays on "Darwinism and Liberalism," *Works*, vol. i. By "Darwinism," he meant the carrying over of the principles of natural selection into the human sphere. He did not depreciate Darwin's contribution to the explanation of the origin of species.

of the ideal type.”¹ He illustrates his thought by showing how a species may change for the purpose of survival.

Let the formula $(a+b+c+\dots+m)$, a , b , c , \dots , m signifying characteristics peculiar to the species, represent the life of a certain species. If, by transition of this species into some new type the relation of its organs and characteristics remains the same, and they merely differentiate and become more complicated without changing their former relation, the result is $(a+b+c+\dots+m)n$ and innumerable other changes are possible in the formula of life. They all amount to this, that the species adapting itself to new conditions of life, loses some former characteristic of its organization and develops others, thus possibly simplifying itself rather than becoming more highly differentiated. Thus the formula $(a+b+c+\dots+m)$

n —————
may change to the formula $\sqrt[n]{a+b+c+\dots+m}$.²

This illustrates Mikhalovsky's contention against the principles of Darwinism. Adaptation intensifies the physiological division of labor by differentiating organs for special functioning. In this manner organized matter is pushed further towards complexity. Under its influence the sum of forces and the capacities of the indivisibles grow continually. Heredity, according to Darwinian sociology, is the static factor, the inertia of society; while adaptation and survival are the dynamic factors of society.

Mikhalovsky rejects this view as lacking a progressive element because it does not consider the best as the fittest. He says: “Darwinism presents in itself the latest revised and supplemented edition of utilitarianism.”³ “When converted into a sociological doctrine Darwinism,” he continues, “only substitutes for the word ‘species’—

¹ Vol. i, p. 289.

² *Ibid.*, p. 257.

³ *Ibid.*, p. 293.

'society'; for the term 'differentiation of characteristics' — 'division of labor,' for the slogan 'struggle for existence' — 'competition.'"¹ Worst of all, this view of progress disregards the interest of the individual. Mikhalovsky says:

Understand, then, that in such a progress the individual regresses. If we contemplate only this aspect of the matter society is the greatest, the nearest and the worst enemy of man, against which at all times he must be on guard. Society strives to transform the individual into a mere organ of itself.²

This danger is, however, not as great as some think. Mikhalovsky calls attention to the fact that man is not necessarily subject to the laws of natural selection. Although he has his natural limitations, nevertheless artificial selection strives to outrun natural selection. He says:

The natural trend of things exists only when and where there is no human being, because man by each step, even by the simplest operations of life modifies his environment and changes in one way or another the existing combination of forces . . . man brings with himself a new force into the world, which, like all other force complexes presents a certain coördination of the principal forces of nature, and also, like all other forces, strives to control all nature.³

Mikhalovsky's critique of the evolutionary doctrines of Spencer and Darwin and his formula of social progress reveal his purpose to rescue the individual from the degrading encroachments of social control. To obtain a highly complex and differentiated society both without sacrifice of the individual's own complexity and with the raising of the individual to the highest possible power, this was the problem Mikhalovsky set himself.

¹ Vol. i, p. 295.

² *Ibid.*, p. 461.

³ *Ibid.*, pp. 329, 331.

2. *The Biological Aspect of the Theory of the Struggle for Individuality*

Mikhalovsky although sternly critical of the biological school of sociology could not break away from the Comtian precedent of rearing the structure of sociological theory upon biological foundations. He therefore makes a study of biological forms of individualities, starting from the principles of Karl Baer and Ernst Haeckel. Baer maintained that the perfection of the organism varies directly as the degree of its complexity; as the high or low differentiation of organs and structure in morphological relations; as the physiological division of labor; and as the coördination of functions (physiologically considered).¹ This same idea was present in the doctrines of other biologists but was completely developed by Ernst Haeckel in his tectological studies. He worked out a sixfold classification of biological individualities² which Mikhalovsky follows, applying it to the social relations of the human in-

¹ Cf. vol. i, p. 228.

² These we give in the original from Haeckel's works:

"I. *Plastiden* (Cytoden und Zellen) oder Elementarorganismen."

II. *Organe* oder Idorgane, Zellenstöcke oder Zellfusionen, einfache oder homoplastische Organe, zusammengesetzte oder heteroplastische Organe, Organsysteme, Organapparate).

III. *Antimeren* (Gegenstücke oder homotype Teile). "Strahlen" der Strahltiere, "Hälften" der endipleuren (bilateralsymmetrischen) Tiere, etc.

IV. *Metameren* (Folgestücke oder homodyname Teile). "Stengelglieder" der Phoresogamen, "Segmente," Ringe oder Zoniten der Gliedertiere, Wirbelsegmente der Wirbeltiere, etc.

V. *Personen* (Prosopen) Sprosse oder gemmae der Pflanzen und Coelenteraten usw. "Individuen" in engsten Sinne bei den höheren Tieren (Später als Histonalen zusammengefasst).

VI. *Cormen* (Stöcke oder Kolonien). Bäume, Sträucher, etc. (Zusammengesetzte Pflanzen). Salpenketten, Polypenstöcke, etc." Haeckel, "Prinzipien der Generellen Morphologie." Edition of 1906, p. 106. Cf. Mikhalovsky, *Works*, vol. ii, p. 346.

dividual. In determining the mutual relations of these biological individualities our author sent forth the following argument: The higher the stage of organic individuality the more firmly are the cells held together. Among the higher animals cells insignificant in number are utilized in the formation of physiological individuality and strive to adapt themselves to independent functioning within the organism. The organic individuality, named by Haeckel *Plastide*, is high or higher in proportion to the quantity of plasmic molecules composing it; it is high also in proportion to the complexity of the atomic compositions of these molecules; again the more the molecules are dependent upon one another and also upon the whole *Plastide*, and finally the more the *Plastide* is centralized and independent of a higher individuality, the organism is individual. The individualities which Haeckel calls *Personen* or Individuals are more perfect in the degree that they are more differentiated in their organic and histological structure, and in the functions of their integral parts, and the more these parts are dependent upon one another and also upon the whole, and finally the more centralized and independent the individual itself is in its relation to the next higher individuality—the colony. The last individuality, which Haeckel calls *Cormen* or colony, is more perfect the more heterogeneous are the individuals, the organs and the tissue composing it; and the more independent the five previous individualities (i. e. the *Plastide*, *Organe*, *Antimeren*, *Metameren*, *Personen*),¹ are the more they all are dependent upon the whole colony, and the more the colony itself is centralized.² In brief each individuality strives towards greater and greater complexity, but this complexity can be attained only at the expense of lower

¹ Cf. last foot-note.

² Cf. Mikhalovsky, *Works*, vol. ii, p. 351.

individualities. Thus conflict in the process of evolution is inevitable. Each individuality contends with its neighboring individualities which it tries to subdue. Says Mikhalovsky:

The history of life with all its diversity, with its beauty and its ugliness, consists in a succession of victories and of defeats. The struggle is waged with alternating fortunes; either one or another of the stages of individuality is victorious. But the struggle never ceases . . . Man, as an individual presents by himself one of the stages of individuality [the fifth, according to the classification of Haeckel.] Into his make up enter four lower orders and over him is the individuality of a sixth order i. e. society, which in its turn may have different forms which will become absorbed in the next stages in the system of individuality.¹

This argumentation and conclusion shows us the biological first principles of Mikhalovsky's system of society. The conclusions deducible from all this as to the duty of the individual and as to his relation to society are apparent. Mikhalovsky expresses them thus:

The struggle for individuality arises for the human individual out of the very situation that nature has allotted to him. His task is two-fold. First the individual must mercilessly subject to himself as an integral all lower individualities which have entered into his constitution. According to the old Roman motto: *divide et impera* he must rigidly carry out the policy of division of labor among his bodily organs demanding from each the highest efficiency for the sake of his own personal interests. Secondly, the individual must carefully guard himself that this motto: *divide et impera* may not be applied to him by some other stage of individuality, no matter how high sounding a name it may have.²

¹ Mikhalovsky, *op. cit.*, p. 353.

² *Ibid.*, p. 354.

This two-fold task Mikhalovsky regards as the principle duty of each individual, and one imposed upon him by nature itself. He regards man and society as organisms on different stages of individuality and exposed to the same dangers as are all other organisms in the biological realm.

On the other hand, Mikhalovsky fears that a continual division and redivision of labor will result in the atrophy of some organs of the human body. He points to the feebleness of woman in certain physical and mental functions.¹ The existence of a sexless ant suggested to him the possibility of a sexless man, as a result of the continual redivision of labor.²

At this point we may indicate the fallacy and inconsistency underlying the biological foundations of Mikhalovsky's theory. Although he strongly and justly criticises Spencer and others of the biological school for their misleading use of biological analogy yet he himself does not escape this pitfall. Having refused to adopt the organic theory of society, he nevertheless considers society as the sixth stage of individuality in Haeckel's classification. (The Cermen of Haeckel's classification is an organic society). But according to Mikhalovsky's own statement, human society should not be considered as an organism at all.³

¹ "Let us express the sum of the strength and ability of man and woman by the formula $a+b+c$. After division of labor, the formula for the man became $a+c$, and for the woman $b+c$. The two formulae, (each simpler than the first) when intensified in their one-sidedness to a^m+c^n and b^p+c^t , becomes dangerous through the threatened atrophy of the "b" capacity in the man and of the "a" capacity in the woman. Therefore, from time to time it may become necessary to return to the primitive proportions, *e. g.* to $a+b+c$ rising to $(a+b+c)^n$." Vol. i, p. 258.

² The reader may have noticed that this view is tenable only on the theory that acquired characteristics are transmissible by heredity. Mikhalovsky, like most laymen in biology of his day, holds this view.

³ Cf. vol. i, p. 54. Also *supra*, p. 131.

Again, carried away by his biological analogy, Mikhalovsky declares the existence of a ceaseless war between the individual and society. No one denies that the individual is in danger of being arrested or diverted in his development by a too rigid social control or by a too intensive subdivision of labor. On the other hand, Mikhalovsky does not fully appreciate the fact that much of the superiority of the human over the animal individual is attributable to the wholesome influences of human society.

3. *The Psychological Aspect of the Theory of the Struggle for Individuality*

Psychic phenomena are real to Mikhalovsky. He regards psychology as a science independent of biology although related to it. He was one of the first to apply psychological principles in the study of social phenomena. We have seen that to him progress is the harmonious development of all of the natural functionings of the individual and that therefore it is the individual's imperative duty to protect himself against control by any group which threatens to encroach upon these functionings.

In his effort to safeguard the individual Mikhalovsky turned his attention to the frequent mass movements of which Russia had had its full share and which, it appeared to him, were psychic and pathological in their nature and tended greatly to the suppression of individual initiative. He made careful studies of these mass movements and described them in two works under the title, *The Hero and the Mob*.¹ Here he points out the bearings of these phenomena upon the struggle for individuality. In these studies he also shows the socializing forces of impression, suggestion and imitation, although he emphasises especially their baleful influences.

¹ These studies were first published about 1882 and fill a large part of the second volume of Mikhalovsky's collected works.

(1) *The Individuating Process and the Functioning of the Hero and the Mob*

Mikhalovsky's *hero* is not necessarily a great man as Carlyle and others of the "great man" school picture him. "Hero," he says, "we shall call that man who by his example captivates the mass for good or for evil, for noble or degrading, for rational or for irrational deeds. *Mob* we shall call the mass which is able to follow an example or suggestion whether highly noble or degrading or morally indifferent.¹ This definition our author trusts will protect him against the charge of attempting to revive the great man theory of history as presented by Carlyle and others. Great men, according to Mikhalovsky, do not fall from Heaven upon earth but rather grow from the earth up into the Heavens. They are products of the very environment which at the same time creates the mob. They incarnate in themselves those forces, feelings, instincts, thoughts and desires which are found scattered in the mob. The "great man" may seem a demi-god from one point of view and an insignificant creature from another point of view. Occasions give men their relative evaluation. Says Mikhalovsky:

Men not considered great in their own generation, were resurrected as great by a succeeding age. Hence the problem lies in the mechanics of the relation between the mob and that man whom the mob considers a great man; and not in some objective standard of greatness. Therefore an evil doer, an

¹Vol. ii, p. 97. It may be noticed here that Mikhalovsky was not of the opinion that great men do not influence the trend of history. On the contrary, he says "Granted that he (the great man) be but a tool of history, yet him has history chosen out of tens and hundreds of thousands to be its tool; but it is a feeling, thinking tool, and, more than that, one consciously acting and striving towards a set goal. The great man may be the resultant of certain forces, but while striving towards his goal, he becomes in turn an active, conscious agent—a cause in the further process of events." Vol. ii, p. 386.

idiot, or an insane man may be as important as some world-renowned genius, so long as the mob has followed him, has truly subjected itself to him, has imitated and worshiped him.¹

Our author then proceeds to show by what process the mass selects a hero from out of its own composition. He thinks that Carlyle was not far from the truth when he asserted that in each person lives a craving towards an ideal, towards something definitely higher and better than any trifling and narrow actuality. This craving for the ideal may express itself in following some one who suggests a kind of heroism. Mikhalovsky gives his own interpretation of the existence of those cravings which call for a hero; but the hero himself is simply one who first breaks the ice, who makes the decisive step which the mob awaits anxiously in order to precipitate itself in one or the other direction. The hero in himself is important only in so far as he has called forth a mass movement, giving it its initial impetus.²

The author cites many interesting historical episodes to illustrate the nature of the *hero* and of the *mob* and of the controlling factors of suggestion and imitation. He observes that the Middle Ages were unusually rich in pathological moral epidemics such as flagellation, frenzied dancing, persecution of the Jews, the crusades, and witch-burning. All mass movements have characteristics in common; these we must discriminate from characteristics that tend to unconscious imitation. The former characteristics may differ in kind, but among general conditions there is, apparently, some kind, or similarity, or current which occasions the imitative character of mass movements, whatever their difference in origin or in cause. In pathological cases the cord of imitation vibrates strongly, but its silence

¹ Vol. ii, p. 98.

² *Ibid.*, p. 100. Cf. p. 366.

in those phenomena which we recognize as normal does not necessarily follow. Mikhalovsky thinks there is a general law of imitation. He says:

Let us imagine a meeting of about 300 members who are addressed by an orator. Let the initial number 10 express the excitement that the orator feels, and let that excitement induced by the first outbursts of his oratory in every one of his 300 hearers be expressed by 5, or at least half of his own excitement. Each in the audience will express this by applause or by increased attention; in their pose and in the look on their faces there will be something strained. Each will observe not the excited orator alone, but also the many strenuously interested or excited fellow listeners. Granting that each hearer perceives but half of the general excitement, we still must express it numerically not by the number 5, but by the number 750, i. e. ($2\frac{1}{2} \times 300$). As to the orator himself, who is the center of the reacting currents of excitement, he may become entirely crushed by them as in fact often happens to inexperienced orators. Of course in reality such avalanche-like growth of excitement cannot be quite as rapid as would theoretically be true because not every one of the 300 hearers sees from his seat each and all of his 299 excited comrades. But the general law of the process is still such as I have described.¹

So the mob is created under pressure of the interactions of similar stimuli, its principal characteristic being unconscious or involuntary imitation.

It remains to be shown under what conditions the tendency to imitate prevails and what manner of people are most prone to make up a mob.²

¹ Vol. ii, p. 145.

² Mikhalovsky combats the idea of certain writers that the mob must be something exceptionally cruel. He says: "The mob, like a photographic camera, copies the beautiful and the ugly. Man, who is in a

Imitateness, according to Mikhalovsky, even in its most abnormal forms, is but a specific case of consciousness obscured, of feebleness of will, occasioned by special circumstances. These special circumstances are the key to all these various phenomena. For the creation of a disposition which readily imitates and is good material for a mob movement, it is necessary to have either an impression strong enough to overcome for the time being all other impressions, or, to have a continuing lack of all impressions. The combination of these two conditions would further increase the effect of imitation.¹ In a word they are the conditions that the hypnotist needs successfully to exercise his powers. Such conditions were characteristic of the Middle Ages. The mediaeval masses were always ready to yield their wills to some hero. Deprived of all original initiative and of all stability, they were depressed by the monotony of the social environment and by the poverty of individual life. Therefore, whenever a peculiar personality appeared the mob was ready to follow him, to make of him a hero or a saint. One needed but to start a frenzied dance, or to whip himself,—all without any good reason,—and he became at once a hero to the crowd.² Mikhalovsky presents much

condition of one-sided concentration of attention, will involuntarily commit acts good or evil. This is a simple case of imitation. But it becomes complex partly by the addition of conscious factors and partly by the struggle between the elements in the image to which attention has been drawn." Vol. ii, p. 459.

¹ Mikhalovsky believes that physiological imitation in the animal world is attributable to these causes, and not to natural selection, as the Darwinians assert. Animals imitate color, forms and relation of parts from other animals or objects, and this not because of any external process of selection or of gradual adaptation, at least not because of these alone; but because of an inner dynamic force stimulated into imitative activity by the environment. Cf. vol. ii, pp. 113 *et seq.*

² Cf. *ibid.*, p. 161 *et seq.*

historical evidence in support of his contention that the cause of the mob with its readiness to imitate is found in the infringement of individuality. The only remedy is to prevent society from turning the individual into an organ or tool for the sake of social efficiency and social safety.¹ The craving toward an ideal which made Carlyle seek for heroes is caused by the suppression of individuality. It will cease whenever society shall give to the individual the opportunity for an harmonious development.

(2) *The Process of Individuation and the Functioning of Love*

In his studies of the psychic aspects of the struggle for individuality, Mikhailovsky turns his attention to the phenomenon of love between the sexes. Though love, he asserts, has physical roots, its flower is nevertheless psychic and is of great importance in completing human individuality. The desire for love originates in the physiological differentiation of organic individualities. The development of the family and the growth of sexual differences go hand in hand. The family in itself represents a type of individuality. According to the law of evolution the family itself differentiates its parts, establishing among its members a division of social and physiological labor. Results of adaptation to these special functionings are still noticeable in certain peculiarities of the

¹ "In the measure," says Mikhailovsky, "that division of labor more and more draws its deep furrows into society, so the striving for unison is but an unconscious make-believe, and in reality changes its character and direction: instead of sympathy there is but imitation. This increases to such a degree that there may be bloody conflict between the representatives of various branches of the divided social labor . . . this was the case especially in the Middle Ages, because of the absence in society of those elements which in one way or another balance the disadvantages of division of labor." Vol. xi, p. 190.

human body. In time the process of differentiation cut man in half and to regain his integrity he seeks his missing half in the opposite sex. Thus love is a striving toward integrity, a striving of men and women toward one another with the purpose of re-establishing the original nature of man. Each one of us is but a half man or a half woman and each half seeks its other half. A happy marriage is a successful selection or coming together of two halves of the whole and an unhappy marriage is an unsuccessful selection.¹

His differentiated sexual status man receives by heredity and cannot alter. But there are secondary sexual characteristics which are developing in man, and which threaten to lower his type. Man's individuality is subjected to the individuality of the family into which enter parents, children and other kindred. Continuous subjection of one stage of individuality to higher stages including the clan, the tribe, the people, the class, the profession, the caste, political and economic groupings, differentiates the sexes more and more, consequently more is required to fill the widening gap. Mikhalovsky correlates the exceptional social stratification of the Middle Ages with its abnormal romanticism. The romances of Abelard and Eloise, of Dante and Beatrice, of Petrarch and Laura, the "*Cours d'amour*" and similar mediaeval phenomena were products of the extreme social differentiation of the sexes, which therefore demanded much more from love than would otherwise have sufficed for the harmonious development of individualities.

Mikhalovsky's conclusion is that

in a given race or in a given epoch, the more men are manly and the more women are womanly, the more powerful will love be. Social differentiation among men and women increases the contrasts, which in their turn increase the demand

¹ Cf. vol. i, p. 509.

for love. Here we get not halves of human beings, as was provided by nature, but still smaller fractions, and the smaller the fraction the more passionately does it strive to supplement itself,—to complete its integrity; but tragically it then becomes increasingly difficult to find this larger supplementing fraction.¹

The increase of divorce Mikhalovsky accounts for in great part by this same cause—too great differentiation of the functions of the sexes. He says:

Civilization which has conquered the individual in the interest of society, increases the desire for love and makes its satisfaction more difficult because of the increased differentiation of its individuals. The more civilized individual seeks greater compensation in love than the uncivilized or less civilized individual, because for the latter the functions in the life of the male and of the female are less differentiated.²

It is clear that to save individuality from such abnormalities society should provide for both sexes ample opportunity to develop all their natural characteristics harmoniously. But society has its own interest, and seeks to increase efficiency by dividing social labor and by maintaining social control. Therefore arises the inevitable struggle between the individual and society.

(3) *The Process of Individuation and the Functioning of Religion*

Mikhalovsky writes relatively little upon religious subjects. He avoids passing any opinion upon dogmatic questions, taking the position of an agnostic positivist who relegates the question of an ultimate cause to the realm of the unknowable. But he recognizes in religion an import-

¹ Cf. vol. i, p. 554.

² *Ibid.* p. 577.

ant social phenomenon which has its psycho-social bearings, and which plays a considerable rôle throughout the struggle for individuality. He defines religion as "the inseparable bond of the things which are, and the things which ought to be. This bond powerfully and infallibly directs the activities of man."¹ Mikhalovsky believes that one may have true and many-sided views about the trend of things, that one may stand at the summit of the knowledge of his time and yet not have any directing principles of life and activity. On the other hand one may have high directing principles and yet keep them apart from objective science, or, knowing their relation to science, one may fail to apply them in practical activity; that is, one may have them as facts but not use them in life. "These *disjuncta membra* of the life of the spirit," he concludes, "must be brought into harmonious unity, and to do this is the function of religion."² He observes that the demand for religion in spite of its abuses and its outlived grotesque forms, never ceases to exist even among the educated classes in Europe. It manifests itself in the rise of continuously new forms and sects, as *Robespierre's* "religion of reason;" or *Auguste Comte's* "religion of humanity;" or the "religion of morals" offered by the society for Ethical Culture; or the "Neo-Budhism" of the Theosophical Society or the "petites religions de Paris" and elsewhere. Historically every new form of social relationship was correlated with the expansion of a religious idea. Religion can be traced through the clan and through the family with its ancestral worship, to the rise of nations with their state religions, always greatly aiding in the maintenance of unity and of solidarity. What love is doing in supplementing the physi-

¹ *Final Works*, St. Petersburg, 1905, vol. xi, p. 5. Cf. *Works*, vol. vi, p. 124.

² *Idem.*

cal differences of individuals, religion is doing for the highly differentiated and specialized realm of ideas. It aids individuality to find itself spiritually, just as love aids the individual to find himself physically.

(4) *The Process of Individualization and the Destructive Functions of Libertinism and Asceticism*

In concluding the study of the psychic aspects of Mikhailovsky's theory of the struggle for individuality there remain to be mentioned the phenomena of libertinism and of asceticism to which our author devotes much attention.¹

Libertinism and asceticism have, according to Mikhailovsky, the same psychological bearing. They are the individual's protest against a too rigid control by society. The libertine's protest is militant and active, the ascetic's protest is peaceful and passive. But each breaks all relations with society.² Individuality will not stand being curtailed beyond certain limits and it will avenge itself upon its enemy—society. Says Mikhailovsky.

Man in himself is not a double-faced Janus, in him are not wedded two subjects and two consciousnesses but many subjects and many consciousnesses, which, however, are hierarchically subjected to the control of the whole, which is self-conscious, and which shows its will as the indivisible Ego. The more centralized this unity is, the more are the specialized and serviceable functionings controlled and adapted by the higher ones; and the more elevated in stage is the individual. In this despotic centralization lies the secret of the health, happiness and moral superiority of the individual. Inversely, sickness and moral degradation express themselves objectively in the de-centralization of our Ego, by the

¹ In his essays on the "Volnitza and Podvizhniki" in vol. i.

² Cf. vol. i, p. 580 *et seq.*

disintegration of individuality as if there were a revolt of the lower individualities against the legal rule of the entire Ego.¹

The libertine and the ascetic are two of the pathological reactions to this suppression of the entire ego, and either can be cured only by a healthy social environment which permits an harmonious development of all normal characteristics of the individuality.

4. *The Economic Aspects of the Theory of Struggle for Individuality*

The economic aspect of society looms high in Mikhalovsky's theorizing. "The task of sociology," he says, is to interpret the relation of objective happiness, i. e. wealth, to subjective happiness, i. e. consumption of wealth."² He believes that individuality can best express itself in work. Work is to the individual what motion is to matter. Work is purposeful expenditure of energy and therefore it is in work that there develops the personality of the individual. Of course Mikhalovsky does not limit his concept of "work" merely to the production of material goods: he includes in it all purposeful activity which can sustain and develop man. Coöperation in work is the strongest factor of socialization. The "people" and the "working class" are to Mikhalovsky almost synonyms. Among the economic aspects of his theory, division of labor and Russian economic institutions receive close attention and therefore we shall now proceed to analyse these.

¹ Vol. xi, p. 358.

² Vol. i, p. 443.

(1) *The Theory of Individuation and the Function of the Division of Labor*

We have seen that Mikhalovsky attaches great importance to the division of labor. He considers it in its physiological, social and economic phases. His formula of progress demands integrity of indivisibles, and the complete-as-possible and many-sided division of labor among men. That means, in his view, that division of labor is desirable only so far as it leaves unharmed the integrity of the indivisible, that is the individual, man. Physiological division of labor within the organism was attained by differentiating the organs and increasing their complexity. Man, being the most complex indivisible, has also the task of exercising all of his organs to prevent them from atrophying. Atrophy of the physical or of the mental characteristics of man is possible through social or economic sub-division of labor; therefore we are confronted with the problem of devising such forms of coöperation as shall safeguard the integrity of the individual. The reason Mikhalovsky gives for safeguarding the individual's physiological complexity is that "each natural physiological function is a source of pleasure; therefore the indivisible has happiness in the degree that the physiological functions are complete and varied."¹

Mikhalovsky distinguishes between coöperation and the economic division of labor. The first is simple social coöperation and consists in the co-working of equal persons pursuing the same end. The other is complex social coöperation and consists in differentiating and specializing functions during the process of production. The latter has ushered in the factory system, and Mikhalovsky rejects is as dangerous to the individual's physical, intellectual

¹ Vol, i, p. 60.

and even moral development. He says : "Among bees and ants the economic division of labor has resulted in physical degeneration as appears in the sexless workers among bees."¹ This result he fears will occur in human society when a factory worker becomes a "hand," his work consisting in certain mechanical, continuous and similar motions of hand or foot. Although modern life demands intellectual equipment, the very mode of working is such as to weaken the mind because it calls for an unceasing stimulation of certain nerves, which inevitably has the effect of deadening them.

Mikhalovsky criticises the Manchester School of political economy which sees in the economic division of labor the advent of the brotherhood of man. He says :

Division of labor supports love not more nor less than a rope supports a man who has been hanged. If such a man were not taken off the gibbet and buried after justice had been satisfied, the rope would cut deeper and deeper into his neck and finally the head would separate and the body would fall. If love towards one's neighbor is to be established upon the principle of division of labor the principle will cut in deeper and deeper to support the love towards one's neighbor, but by this process it will diminish the number of neighbors.²

So the economic division of labor is death to individuality. It will transform him into a tool and crush in him that harmony of functions which alone renders him happy, and elevates him in the animal world.

When in later years Durkheim's "Division du travail social" appeared, and when the modern forms of division of labor were looked upon as an organic division of labor, with individuals specializing in coöperation, and

¹ Vol. i, p. 53.

² *Ibid.*, p. 182.

thereby achieving both solidarity and individuation, (the opposite of what Mikhalovsky had held would happen) he still defended his conclusions, pointing out that the modern workman is by no means an independent individuality. He usually is rigidly controlled by the small trade union which has no sense of solidarity with society at large. The highly differentiated union system, called into life by the modern division of labor, has all the disadvantages, he believes, of the caste and of the guild systems of the past, and none of their advantages, because of the minute specialization in the various branches of production. The coöperation of the industrial world, for example, is in principle radically different from the coöperation of a group of scientists. The solidarity which binds together various branches of science is not organic solidarity founded upon the division of labor, but, rather, is a mechanical solidarity based upon simple coöperation. Similarity, not difference, is the principal bond which creates solidarity among men of science.¹ This he thinks is not true of the organic division of labor.

(2) *Individuation and Russian Economic Institutions*

Mikhalovsky holds that one of the duties of sociology is to point out what institutions of production are best for the safeguarding of the integrity of individuality.² We have just now seen that he opposes the modern division of labor, and, naturally, he also opposes the factory system with production on a large scale. He thinks Western Europe irredeemably degraded and lowered to the bourgeois type,³ but he hopes that Russia may be spared this lowering of

¹ Cf. Mikhalovsky's article on Durkheim's Theory. In *Russkoye Bogatstvo*, May, 1897.

² Cf. vol. i, p. 443.

³ Mikhalovsky discovers a difference between type and stage of devel-

type by the maintenance and development of her communal system. He says:

Adversaries of our communal land system clamor for personal liberty. They say that the commune ties the owner hand and foot to the soil, and that it does not give him any freedom for individual activity. This was once spoken in the West. There the commune decayed, the individual triumphed and received the liberty of choosing his occupation, he had but to adapt himself to the new conditions. The right of "free choice" of the emancipated individual was however immediately limited by historical development. He became a factory slave instead of a land owner, producing great wealth and yet actually starving.¹

So Mikhalovsky believes that individual initiative in economic lines is possible only to a property holder. He says: "Fear more than anything else a social order that will divert property from labor. It will deprive the people of the possibility of individual initiative, of independence and of liberty."²

Nor does Mikhalovsky hold the theory of the classic economist that the natural resources of the country can be developed only by a competitive system of industry. He says:

The natural resources of a country can also be developed

opment. Division of labor raises the stage of development but lowers the type; for example, the sexless ant is more efficient than the ancient undifferentiated ant. It produces more, and is, therefore, more useful to its society, wherein the stage of civilization rises while the type is lowered. Thus also he believes the English workingmen to be upon a higher plane of civilization than the Russian peasant who lives in the commune; the latter, however, has a higher type of civilization because it presents a wider range of activities. Cf. vol. i, pp. 477-478.

¹ Vol. iii, pp. 199-200.

² Vol. i, p. 704.

by communal land ownership. For this purpose it is but necessary to have well directed social principles. . . . Besides wealth consumers, there exist in this world also consumers of human beings, and these should not be allowed to be brought as sacrifice to the Moloch of national wealth.¹

The commune of the country and the workingmen's cartell of the cities were precious to him not for their own sakes like one's own idol, but because they were a refuge for the individuality of the common man fleeing from the threatening perils of a capitalistic-industrial order of society. Mikhalovsky therefore advocates the maintenance of the commune by government interference² because he is convinced that the commune determines the future of the Russian people. The commune, if properly restricted and conducted, will give an opportunity for the harmonious development of man's entire individuality; it will protect against any lowering of the type and it will gradually approach a higher plane of civilization.

5. *The Historical Aspect of the Theory of the Struggle for Individuality*

The idea of the struggle for individuality reflects itself also in Mikhalovsky's views on the philosophy of history. Like many other philosophers of history he discerns three stages in the evolutionary process of history. He calls them the objective anthropocentric stage, the eccentric stage and the subjective anthropocentric stage. His exposition of these stages reminds one of Comte's famous interpretation of history. Mikhalovsky does not deny Comte's influence upon him. He says: "The law of the three stages (of Comte) which does not satisfy me completely I neverthe-

¹ Vol. vi, p. 301.

² Cf. vol. i, p. 704, and vol. iv, p. 1000.

less acknowledge as an extraordinarily valuable generalization, but when I first became acquainted with the great work of Comte, I already had my own views on the subject sufficiently developed.”¹ The principal difference between the two is that Comte emphasizes the intellectual aspect of the historical process, believing that it explains other functions of society; while Mikhalovsky, on the contrary, proceeds from the ethical relations and the forms of coöperation peculiar to certain periods in history. He agrees generally with Comte, however, as to the extent of the several stages. We shall indicate briefly the characteristics of each.

(1). The *objective anthropocentric stage* is characterized by a naive faith, in which man regards himself as the one objective, absolutely real, center of nature. “It receives its highest development,” says Mikhalovsky, “when all humanity, man in general, is recognized as the center of nature, and not this or another ethnological, political or professional caste.”²

It is the age of anthropomorphism, mysticism, theology and religion. Economically it expresses itself in simple co-operation i. e., in work towards a common end.

(2). The *eccentric stage* reduces the dualism of body and soul to manifest absurdity and puts man under the rule of abstract concepts. “Man,” says Mikhalovsky, “is here halved and torn and deprived of his empirical content.”³ His ideals and duties are all outside of himself in an abstract void, which he thinks more worth while than himself. During this period metaphysical systems flourish. Economically this period expresses itself as complex co-operation which takes the form of the division of labor and the specialization of economic functions.

¹ Vol. iv, p. 100.

² Vol. i, p. 199.

³ *Ibid.*, p. 200.

(3). *The subjective anthropocentric stage* is characterized in two-fold manner, by its humaneness and by the control of nature by man. Says our author:

Here we hear men say: "Yes, nature is unmerciful to me, she knows no difference of justice between me and the sparrow; but I also shall be unmerciful to her; with bloody judgment I shall conquer her. I shall compel her to serve me, I shall eliminate evil and create good. I am not the goal of nature, nature has no goal. But I have a goal and I shall reach it."¹

In this stage ethical ideals and purely humane theology are attained. It is at the same time the age of science and of positivism. Economically it is characterized by coöperation still simple but more highly developed than in the first period of human history. Mikhalovsky, who is deeply impressed by this historic process, says that were he an artist he would create only three paintings, which should express in turn these three stages. He pictures in words what he would limn upon the canvass: "In the midst of a city's square a half rotten execution block and on it the prostrate skeleton of the last criminal. A raven that is on the scene, could he speak, would caw the principle of Kant: *fiat justitia pereat mundus!*"² This is a picture of the eccentric period developed to its logical extremity, as in Kant's contention that the last criminal ought to be punished though society had itself ceased to exist.

The subjective anthropocentric period has also its gloomy aspect. This Mikhalovsky thinks could be pictured by Byron's poem, "Darkness," which represents the struggle of the individual with nature.³

¹ Vol. i, p. 215.

² *Ibid.*, p. 137.

³ Lord Byron, *Works* (ed. by E. H. Coleridge), vol. iv, pp. 42-45.

"The bright sun was extinguished, and the stars
 Did wander darkling in eternal space,
 A fearful hope was all the World contained;
 some lay down
 And hid their eyes and wept; and some did rest
 Their chins upon their clenched hands, and smiled,
 And others hurried to and fro, and fed
 Their funeral piles with fuel, and looked up
 With mad disquietude on the dull day,
 The pall of a past World; and then again
 With curses cast them down upon the dust,
 And gnashed their teeth and howled: . . .

 Even the dogs aided their masters, all save one, . . .

 The crowd was famished by degrees; but two
 Of an enormous city did survive,
 And they were enemies: they met . . .

 and beheld
 Each other's aspects . . . saw, and shrieked and died. . . ."

In general Mikhalovsky is pessimistic about the triumph of the individual in his struggle with environment and with society. In Russia matters have not gone his way; the commune has gradually been disintegrating, and signs of the times seem to indicate that his hope of a special economic and social evolution in Russia will remain but a pleasant dream of reform and that the bourgeoisie will triumph in Russia as it has in Western Europe.

Conclusion

We have attempted to give an analysis of Mikhalovsky's sociological system which he called "The Struggle for Individuality." These ideas permeated all of his social, ethical and historical thinking. We have presented each one of its important phases, although there were many difficulties to be overcome on account of the incoherence of the scattered material. Mikhalovsky often expressed the hope of being

able to write one comprehensive book, and to unite the various parts of his system into a coherent whole, but his busy life as editor and as critic made this impracticable.

Regarding his theory, we may say that in reality Mikhailovsky does not differ very radically from the organic school in sociology, which he criticised. He only substitutes the concept Individuality, for that of Organism. We must remember that the hierarchy of Haeckel's Individualities which Mikhailovsky adopted without reservation, itself consists of organic individualities. The only difference is that he views organisms as in a negative and hostile relation to one another, but this is more in the nature of an opinion than of a fact. One may find in this tectological hierarchy as many reasons in support of the contrary opinion. Humanity strives as persistently towards social solidarity as towards individuation. Therefore the rigid individualism of Mikhailovsky is more an ideal of his than an historical and scientific necessity. Apart from this weakness Mikhailovsky has rendered valuable services as one of the first writers to make psychological analysis of social phenomena. His early protest against a too intensive division of labor has been proven to have been fully justified, only he overlooked the fact that extreme differentiation in production is offset by an ever-increasing homogeneity of consumption¹ and by the shortening of hours of labor, giving everyone opportunity to develop his individuality without sacrificing the advantages of a subdivided and specialized labor.

Mikhailovsky seems to be bitter and unjust in his attitude towards society. He forgets at times the great services which it has rendered to the individual. But this may be pardoned him if we remember that he wrote in sociology not as a professor who has only scientific interests in mind

¹ See Giddings, "The Quality of Civilization," in *American Journal of Sociology*, vol. xvii, no. 5,

but as a leader of a movement which was fighting the institutions of autocracy. Like Lavrov's theories his system was principally a scientific justification of a current, social political movement. His aim was to protect the individual against too rigid autocratic control, and he sought to reconcile what he called the *pravda*-truth with the *pravda*-justice. His heart beat warmly for his people, whose intellectual leader and guide he was for a generation. Thus Mikhalovsky is important principally to his own people and generation, but he also contributed to sociology at large, and this should be gratefully although it has been tardily acknowledged by the scientific world.

CHAPTER III

THE SOCIOLOGICAL CONTRIBUTIONS OF YOUZHAKOV

LAVROV and Mikhalovsky greatly influenced the intellectual classes of Russia. Many, stimulated by their writings, tried to branch off and to develop theories of their own. The most important of these later writers was S. N. Youzhakov whose contributions to Russian sociological theory we shall consider next.

Youzhakov ¹ appeared in the Russian sociological arena as a critic of the "subjectivist" method in sociology, attacking both Lavrov and Mikhalovsky. His argument is briefly this: Lavrov is wrong in maintaining that history does not repeat itself. Youzhakov says: "There are common features in the recurring events of history, and deviations are found: even in exact science there are deviations as, for example, in astronomy."² Again, there is but one human logic, "The logical process of thinking and the psychological phenomena of perception are alike among all men, so that things true to one are true to others also; they may be checked up by others."³ The peculiarity of the subjective

¹ Sergey Nikolaevitch Youzhakov (1849-1910) is well known in Russia as a contributor to various leading Russian periodicals and as the editor-in-chief of the Russian "Large Encyclopedia." His contributions to sociology were made between the years 1872-1875, and have been edited in two volumes under the title of *Sociological Études*; vol. i, St. Petersburg, 1891, and vol. ii, St. Petersburg, 1896.

² Youzhakov, *Sociological Études*, vol. i, p. 242.

³ *Ibid.*, p. 245.

method, Youzhakov thinks, is that it is based upon an evaluation of the relative importance of social phenomena, and upon the individual views of the investigator as to what relations of members of society to each other and to the whole, are normal. There is really no special contribution in this, and the subjective method therefore is but an emphasis of one very important sociological proposition, namely, that society is based upon individuals, and that the evolution of society takes place by means of individuals and for individuals.¹ This proposition Youzhakov considers of vital importance. Yet he sees no need to study subjective and ethical phenomena by other methods than those hitherto generally adopted in the social sciences. Youzhakov, therefore, prefers to call the subjectivist school in Russia simply the Russian School of Sociology, believing that the Russians were first to emphasize the psychological and ethical aspects of sociology. Youzhakov worked towards the development of a complete system of sociology according to an outline that is given below.

Outline of Youzhakov's Theory of Sociology

- I. A survey of the sociological problems and of the principal forces in the socializing process.
- II. The organic principle as a factor of the socializing process.
- III. The moral principle and the social equilibrium.
- IV. The economic principle and the social struggle.
- V. The political principle and the disturbed equilibrium between the moral principle and the principles of organic and economic struggle.
- VI. The intellectual principle and progress, conceiving progress not as natural evolution, as it appears in

¹ Cf. *ibid.*, p. 242 et seq.

the combined results of the organic, economic and political principles, but as a purposefully directed evolution of mankind towards self-preservation and perfection.

VII. Classification of the forms of social life.

VIII. Historical environment, i. e. the relation of one society to its neighboring societies.

IX. Physiological environment.¹

The author does not claim to have treated all these topics exhaustively. Some of them are barely indicated, and others meagerly synthetized.

What Youzhakov actually has written may be analyzed under the following heads:

- I. Sources of Youzhakov's philosophical and sociological views.
- II. What is sociology and what are its principal problems?
- III. What is society and what are the ultimate and proximate causes of socialization?
- IV. The organic-physical aspect of sociology.
- V. The ethical aspect of sociology.
- VI. The economic aspect of sociology.
- VII. Résumé and conclusion.

I. Sources of Youzhakov's Philosophical and Sociological Views

Youzhakov, belonging to the school of Lavrov and Mikhailovsky, holds in general the same philosophical views that they had appropriated and developed. He is positivist and empiricist, acknowledging Comte and Spencer as his principal authorities. Like Comte he holds: (1) That what is true of inorganic and of organic phenomena, is

¹ Cf. vol. ii, pp. iii-v.

true also of social phenomena; (2) That the laws of physical life everywhere are applicable to social life; (3) That physical and organic laws are modified in society by new conditions and agents and that, therefore, they there present a peculiar and specific character.¹ On the basis of these generalizations Youzhakov in part adopts Comte's classification of the sciences, but he describes sociology as an abstract science which analyzes the structure and function of social aggregates, (social statics), and, which studies the forces of development or progress (social dynamics).² Spencer's theory of evolution as it applies to the inorganic and the organic realm is adopted in principle by Youzhakov, but with reservations as to its uniform validity in the evolution of society. Here he accepts Mikhalovsky's criticism of Spencer and Darwin, although he deviates to some extent from his fellow countryman's constructive theories. Buckle and Darwin had their share in shaping Youzhakov's views, and he was intellectually influenced by many others, especially by some of the French writers. Thus, like Lavrov, he attempts a synthesis of the principal sociological theories, gathering them around the individual. He thinks that the individual can by means of his social and economic surplus adapt environment to himself and direct it to a goal.

So far we have mentioned the theoretic sources from which Youzhakov has drawn. But the real forces that stimulated him to study and write on sociology were not his scholarly interests. He was one of the populist leaders whose interests were to re-shape Russian society and lead it on to progress. Thus he is not only a contributor to the subjectivist school of sociology; he is a comrade of Lavrov and Mikhalovsky in the Russian people's cause of social reform.

¹ Cf. vol. i, p. 4.

² Cf. vol. vi, pp. 40-44.

II. *What is Sociology and What are Its Principle Problems.*

We have already mentioned that Youzhakov in general followed Comte's classification of the sciences, viewing sociology as the final product in the formulation of scientific thought. He defines sociology as "the science of the laws controlling group living and accounting for its origin, development and disintegration."¹ Sociology generalizes, accordingly, the products of many other social sciences such as political economy, ethics, law, and linguistics.

The first and chief business of sociology, our author thinks, is the discovery of those forms of social life in which the universal laws of interaction (or association) and of equilibration are manifested.² In dealing with this problem, the author makes an analysis of the laws of evolution as they apply to social phenomena. Although he devotes much space to them, he does not get very far away from the Spencerian view as found in "First Principles." The second principal business of sociology, Youzhakov believes to be the exposition of the influence of organic life upon the universal laws of association and equilibration.³ We recognize here the organic nature of society in contrast to the inorganic or physical nature of environment. We shall deal with this problem later.⁴ The third main task of sociology is to show the influence of individuality within the social aggregate upon association and equilibration, the peculiarities arising from the association of individuals within a social aggregate, and how association reacts upon individuals and upon environment.⁵ Finally Youzhakov devotes attention

¹ Vol. ii, p. 39.

² Cf. *ibid.*, p. 45.

³ Cf. *ibid.*, p. 48.

⁴ *Infra*, sec. iv, pp. 163 *et seq.*

⁵ Cf. *ibid.*, p. 49. *Vide infra*, sec. v.

to the economic aspect of sociology. Viewing on the one hand the modern production of wealth as a handicap to individuality, he on the other hand acknowledges it to be an important factor in the struggle for individuation. Accordingly the storing of matter and energy by society is the phenomenon of economic culture, and the equilibration of stored energies appears as civilization or as ethical and political culture.¹

III. *What is Society and What are the Ultimate and Proximate Causes of Socialization?*

In his study of the socializing process our author makes a distinction between aggregates formed by co-dwelling and aggregates that can be called societies. "A co-dwelling group is an integral composed of units with poorly expressed individualities,"² i. e. of units possessed of but an inferior ability to counteract the influence of environment and the conditions of existence in general. Such groups are the material from which societies are formed at the price of suppressing a mass of lower individualities that are sacrificed to higher individualities. Thus "Society is an aggregate of active units which has created its own social environment or culture and which has welded itself into one complex body. In brief, society is an actively cultural social aggregate."³ The ultimate cause of socialization is complex activity. The author arrives at this conclusion or formula from a survey of the cosmic and of the biological processes. The cosmic process is that of continuous integration, differentiation and equilibration. The organic process consists in the storing of energy by the matter in organisms. Physical disintegration absorbs

¹ Cf. *ibid.*, p. 75.

² *Ibid.*, p. 89.

³ Vol. i, p. 36.

less energy than is dissipated by chemical integration. This liberated surplus is spent on work which by society is stored into objects of culture. Hence activity is inverse to the organic process, it consists in the physical disintegration of chemically integrated matter.

Activity and passivity present the fundamental difference between animal and plant life, activity being the new additional characteristic of an animate being. Purposeful work is the dynamic aspect of activity. The organic process consists in the storing of energy by the matter within the organism. Purposeful work or activity, or the active process, consists in its expenditure. "If," concludes Youzhakov, "we have called work the dynamic aspect of the phenomenon of activity, then individuality and culture are its static aspect. In individuality and culture activity becomes materialized, the former in the structure of the organism, the latter in environment."¹ Thus activity expresses itself in a reaction on life and environment. It differs from the reaction of passive life (which adapts itself to environment) by adapting environment to itself to satisfy its needs. Hence purposefulness in reacting on environment is its first distinctive characteristic and "activity is work for the purpose of self-preservation."² The proximate causes of the process of socialization arise from this ultimate cause which, as we have seen, Youzhakov identifies with *activity or purposeful work*, which shows itself first in the struggle for self-preservation. Individual self-preservation naturally tends towards the formation of groups which, through habit, in time become permanent. Group life creates a new task, for along with the struggle for individual self-preservation the struggle for the preservation of the group becomes necessary. These two

¹ Vol. i, p. 36. Cf. also pp. 161 *et seq.*

² *Ibid.*, p. 162.

interests, naturally conditioned, may come in conflict, the one at times infringing upon the other. So are created the ethical problem, and moral concepts, which, arising out of conflict between the individual and the group, become an important socializing factor. Energies expended in maintaining the group are obtained from the surplus anteriorly produced by efficiency from co-operation and by better security. Thus surplus grows as the group increasingly practices the exploitation of nature and the division of labor. Coöperation creates social activity. The welding of social-cultural activity with social life creates society. Thus activity after having established the group, uses the products of group life for further socialization, and its activity becomes social progress when it succeeds in establishing an equilibrium between social and individual activity.

IV. *The Organic and Physical Aspects of Sociology*

What influence have the laws of organic life and of physical environment upon the social aggregate? This question Youzhakov attempts to answer in his Sociological Études. He analyzes the generalizations of Darwinism and Malthusianism as these are applied to social evolution, and puts them in juxtaposition with what he calls historical selection. Of the two principal generalizations of Darwinism, natural selection and sexual selection, he believes that only the latter has been of considerable influence in the development of society. He enumerates the principal phases of sexual selection in human society as follows: (1) In communal marriage, sexual selection is conditioned by the numerical inequality of the sexes occasioned by infanticide. (2) In polyandry, sexual selection is conditioned by the same cause, here the factor in selection is the handsomeness of the male. (3) Along with polyandry develops polygamy, begin-

ning with wife-stealing¹ and the factors which are selected by this practice are personal strength and bravery of the male. (4) When polygamy becomes legalized selection is conditioned by a caste system and its accompanying despotism of the wealthier or so-called higher classes whereby the selective process in the lower strata of society is artificially limited. (5) In monogamy, sexual selection loses its importance. The selective process is conditioned by social stratification and by the mutual leanings of both sexes. The rise of the power of the state which regulates marriage and divorce, the general prevalence of monogamy, the triumph of democracy which grants equal rights to both sexes, and the corresponding changes in moral ideals—these are, according to Youzhakov's opinion, consecutive stages in the elimination of sexual selection as a factor in social evolution.² Youzhakov made some statistical verifications of the generalizations of Malthus. On the basis of these, he argues that the Malthusian formula, holding true in the realm of nature, is offset by what he calls historical selection, which tends to supersede the struggle for existence. Scientific production, a fairer distribution of economic goods, and opportunity for intellectual development, which he believes inevitably tends to check human fertility—these are the factors which equilibrate demand and supply and which eliminate the dangers of over-population.³ Artificial selection⁴ struggles with natural selection and strives to disintegrate

¹ Cf. vol. i, p. 98 *et seq.*, and p. 200.

² The author gives interesting ethnographic observations among the various Slavic tribes and he believes that among the primitive Slavs wife-stealing was a common practice, and therefore also polygamy.

³ Cf. vol. i, pp. 80-81. Divorce, concubinage, and prostitution in modern society are having some importance as factors of sexual selection, but their rôle is more negative since sexual excesses usually result in sterility or in a relatively small number of progeny. Cf. *ibid.*, p. 91.

⁴ "Historical selection" is Youzhakov's expression.

the hereditary and adverse products of natural selection. Historically this process of disintegration was carried out through the aid of human culture, which already in savage society showed itself in the use of artificial weapons, which checked to some extent the process of natural selection. Cultural activity, once begun, must continually increase, to maintain its superiority over nature. It selects the best artificial tools and weapons needed in the struggle. Besides the superiority of the weapon, complex coöperation becomes an important factor in this struggle against natural selection. Coöperation develops with the growth of economic, political and religious institutions. These give the group a strong sense of solidarity, and moral ideals, which limit the individual struggle, and which, with the growth of intelligence and of surplus, create an equilibrium between the increase of population and the means of subsistence.¹ Moreover, Youzhakov might have added, that natural selection is offset by historical selection because cultural achievements are not transmitted hereditarily, but must be learned anew, although more rapidly by each generation. Thus not nature but nurture is the principal factor of historical selection.

If natural selection should be thought desirable in society it must establish conditions which of themselves do not exist. Says Youzhakov:

In such a society no legal inheritance of wealth and of political power must exist; all of its members must receive an equal general education and all must have an equal opportunity for a higher education or for a specialized education; all must be equally cared for until of age, but the institution of private property must be maintained. Under these conditions natural selection would have a chance to show itself, though there are no guarantees that it would help to perfect the race.²

¹ Cf. *ibid.*, p. 110 *et seq.*, and pp. 121-122.

² *Ibid.*, p. 139.

Thus is social progress principally differentiated from organic progress; and thus does social progress tend to limit or to suppress organic progress. Although there is much that is analogous¹ between a social and a vital organism, the laws of the latter are subordinated to new laws which themselves appear in the process of the development of the social organism.

Natural selection was the decisive factor in the early savage stage of man. Physical environment was then but of secondary importance, but as man began to learn to the full how to utilize his environment, the serviceability of his environment became decisive. Natural selection was thus weakened by man's use of his environment, the latter in its turn becoming decisive in his historical development. But in time environment is conquered through the development of culture; and then the process of history is determined by the coördinated activity of culture and of the individual's initiative. Youzhakov concludes:

Thus the history of mankind from the days of the primitive family and tribe to the present forms of civilization presents in itself three distinct periods: (1) The period in which natural and sexual selection are the determining factors of development, and in which the direct influence of environment is of secondary serviceable importance; (2) the period in which with the disintegration and partial elimination of the complex agents of organic progress, the influence of environment rises to primary importance; and, through the inadequate development of culture the characteristics of this period are determined by the climate, the soil, the topography and the general

¹ "The (biological) concepts of life and death are as applicable to social aggregates as to cultural evolution. . . . Social life and its culture are to be conceived of as analogous to organic life in the process of chemical disintegration and physical integration of matter." Vol. i, pp. 70-71.

conditions of nature: finally (3) begins the epoch in which culture attains such power that it either eliminates the influences of physical environment or considerably delimits their importance. It is in this period that mankind, more than ever before, becomes lord over its destiny and its history. The terms that conveniently designate these three periods are: (1) savagery, (2) barbarism, and (3) civilization.¹

V. *The Ethical Aspect of Sociology*

Organic activity differentiated the individual. His struggle to preserve himself in the arena of life created the group which, on the one hand made individual existence possible, and on the other hand continually threatened individuality by differentiating the individual's activity into special functionings in the interests of the aggregate. The interrelations of the individual and the group give rise to morality and create the ethical problem.

The struggle for existence at the stage of active social life takes the form of a struggle for individuality and the struggle for culture. These two are the goal of social evolution. Under normal conditions they develop along parallel lines and in direct relation to each other, but if culture suppresses individuality, the lowering of culture itself results. On the other hand, individuality which destroys culture, shortens life and lowers its own type.² Individuality becomes a personality³ when the social aggregate in which it is found regards it as a member or a responsible agent of the group. This makes the formation of a moral principle possible. Says Youzhakov:

¹ Vol. i, p. 231.

² Cf. vol. ii, pp. 184-185. By culture, the author means the surplus products from the adaptations of environment to the needs of the group.

³ Cf. vol. ii, p. 187.

Moral progress consists in the adaptation of the activities of the individual to social conditions, and this adaptation expresses itself in the creation of perfect ideals of sociability and in the perfect correlation of the ideals of an epoch with the feelings of individuals. Thus the development of morality becomes a process of adaptation of life to social existence. The degree of this development may be the best criterion for determining the status of society.¹

The moral principle is the product of an equilibration between the struggle for individual, and for social, self-preservation; in the moral individual energy voluntarily harmonizes with the interests of social life; in it the antagonism between individual and social development is abolished. On the one hand is seen the abolition of criminality in the individual; and on the other, the abolition of coercion by the group. Thus moral principle consists in a socially harmonized self-directed activity. Coercive harmony is authority: self-directed socially disharmonious activity is criminality. Hence the development of moral principle equally limits the province of crime and the province of coercion, and at the same time advances individual activity and serves the purpose of social self-preservation. Accordingly, morality is but a form of activity which is conditioning aggregate life and which makes further development possible.² Criminal activity of individuals tends to disintegrate society, and unnecessary social control which handicaps individual activity is no less a waste of social energies. Only a proper equilibration of social and individual interests can perpetuate society and prevent abnormal disintegration and decay. All social phenomena have for their cause not any one category of antecedent

¹ Vol. i, p. 148.

² Cf. vol. ii, pp. 191-192.

events, but all categories. Thus, for example, economic changes are produced not only by economic factors but also by political, intellectual, moral and organic factors. In this manner moral activity of necessity reacts upon economic, political and organic activity as well as upon itself.¹ Since moral ideas are the product of the equilibration of social and individual interests, therefore "the discovery of the laws of equilibrium between these two tendencies, and the laws which would establish the continuity of this equilibrium, will mean the discovery of the laws of progress of social life and will make it possible to establish a formula of social progress."²

VI. *The Economic Aspect of Sociology*

We have learned that activity in the sense of purposefully directed work lies at the basis of the process of socialization according to Youzhakov.

Economic activity creates a physical or material surplus which in turn makes possible the growth of culture or general surplus product. Now cultural activity, we already know, prevents further organic differentiation because of the artificial production of tools and weapons. In this manner individuality is protected against further organic differentiation. Further economic development has the tendency to establish permanence of location and of functioning. The higher the culture, the more stable are social relations, the more differentiated are the social functions and the more unchanging are the individual's location and occupation.³ This process of economic differentiation, or division of labor becomes, however, a menace when society in its effort to increase its aggregate efficiency transforms

¹ Cf. vol. ii, p. 221.

² *Ibid.*, p. 186.

³ Cf. vol. ii, p. 97.

its members more or less into mere organs and turns them back upon the road of organic development. This control of activity by organized society tells sooner or later in a decrease of the sum of energy in the differentiating aggregate itself, in its own gradual weakening and disintegration. Only those aggregates which succeed in making tools out of their economic surplus instead of out of their living members escape the vicious cycle of historical rise and fall. But when culture becomes a supplementary weapon, in the struggle between rivaling races, it does not lead towards organic differentiation and cyclism. It becomes a factor in establishing progressiveness, altruism and morality. In brief, economic surplus becomes a weapon in protecting and developing individuality.¹ The weapons of cultural activity, such as wealth, power, morals, find their static expression in the development of institutions. Wealth as the weapon of the economic struggle has its own institutions whose history Youzhakov develops from the earliest times of wealth production. We will briefly enumerate their characteristics.

The period of savagery passes as man learns the arts of pastoral and agricultural pursuits. Wealth in cattle makes the growth of population possible. This wealth among nomadic peoples becomes a means of autocratic control. Law and justice are based upon the principle of kinship which the nomad learns from his herds. The tilling of the soil encourages permanent settlement. In agricultural communities the principles of law and justice change from the kinship basis to the basis of toil. Thus in ethnic society surplus is attained principally through cattle breeding and agriculture. In civic society economic development passes through three stages, that of slavery, that of

¹ Cf. *ibid.*, pp. 95-100 and 263-264.

monopoly and that of disintegration of the factors of production. The passing of slavery was beneficent as far as it helped to prevent the rigid cultural integration which threatened to demoralize society. The establishment of artisan monopolies and guilds in place of slave labor tended towards a similar although less crude, cultural integration. It, however, differentiated political from economic functions. Further development of capitalistic monopolies gradually displaced the medieval trade corporation and the artisan guilds and still more divorced the economic from the political functions.¹

Economic functioning, which became an important factor in individual and group control, has an analogous function in the international struggle. As national wealth and national power were achieved in passing through the successive stages of slavery, monopoly and free labor, so analogously international control has to pass through the like stages. The first was that of raiding expeditions and the levying of tolls upon the conquered. The second was the development of the world-wide commercial and industrial monopolies such as the great trading companies of Spain, Holland and England, which tolerated no competitors, but disposed of them forcibly. The third stage is characterized by the *laissez-faire*, *laissez-passer* policy in industrial and commercial exploitation, with accompanying wars for the control of world markets. But along with this development grows the international solidarity of the working classes. Slavery produced no solidarity, the medieval trade union had but a limited solidarity, whereas the modern labor movement is expanding its boundaries beyond occupational and national lines.

¹ Cf. *ibid.*, pp. 271-292.

VII. *Résumé and Conclusion*

In reviewing our survey of Youzhakov's sociological studies we see that in general he developed the principal ideas of Comte and Spencer, as well as those of Lavrov and of Mikhalovsky. We cannot credit him with having successfully or adequately developed a synthetic system of sociology, which was what he attempted to do. Nevertheless he brought out and emphasized a few important truths which are now quite generally accepted by sociologists. Thus he showed quite clearly that the socializing process is an equilibration between the inner and the outer relations of life and environment. In this process, life first adapting itself to environment, in its turn adapts environment to itself. This Youzhakov calls social culture. The surplus gained from the control of nature sets limits to natural selection among men. Thus ethical and not biological laws begin to control human relations. Self-directed activity increases social and economic surplus and helps to produce an equilibrium between the individuating and the socializing forces and also between supply and demand in the increase of population.

The emphasis laid upon the rôle of surplus in emancipating the individual from a too rigid social control and from the evil consequences of too highly differentiated and too minutely divided labor exhibited a truth which, as we have seen, was not sufficiently emphasized by Mikhalovsky. Thus Youzhakov's illuminating discussion of this factor is a welcome element in the later subjectivist school of sociology.

CHAPTER IV

THE SOCIOLOGICAL CONTRIBUTIONS OF N. I. KAREYEV

KAREYEV¹ is the most synthetic of the subjectivist school. As a philosopher of history he recognized in sociology the science which can give to history a scientific interpretation, and saw that with its aid a formula of social progress can be found which, in his opinion, should help to solve the problems of the historian. He says: "A formula of progress must give an ideal criterion for the evaluation of historical progress; without such evaluation a reasoned judgment upon actual history and its meaning is impossible."² His major interest is the philosophy of history, which he is more careful than many writers are to distinguish from sociology.³ Accordingly he attempts to assign to so-

¹ Nikolai Ivanovitch Kareyev (1850-) is the only contributor to the subjectivist school who belongs to the professorial rank. He holds the chair of the philosophy of history in the University of Petrograd, and he lectures also on sociology. Among the subjectivist sociologists he is distinguished by his wide and thorough scholarship and a degree of originality. He is the author of many works on history, philosophy and sociology. His sociological ideas are principally developed in volume II of his *Principal Queries of the Philosophy of History*, 1883; *The Nature of the Historic Process and the Rôle of the Individual in History*, 1890; *Historico-Philosophical and Sociological Etudes*, 1896; and *Introduction to Sociology*, 1897. Although since this last date he has written considerably, he has not contributed anything of importance to sociology.

² Kareyev, *Historico-Philosophical and Sociological Etudes*, p. 211.

³ E. g., Dr. Paul Barth, *Die Philosophie der Geschichte als Soziologie*, Leipzig, 1898.

ciology its definite province. A study of his work suggests the following analysis of his sociological contributions.

- I. Kareyev's philosophical and methodological presuppositions.
- II. What society is in its various aspects.
- III. The nature of the historic process and the rôle of the individual in history.
- IV. The sociological problem of progress.
- V. Conclusion: Kareyev and the subjectivist school of Russian sociologists.

I. *Kareyev's Philosophical and Methodological Presuppositions*

Like the other writers of the subjectivist school Kareyev is an idealistic positivist and empiricist. He believes that an idealistic attitude is compatible with a strictly positivist view. He explains it thus: "Idealism is misinterpreted and confused with spiritism, the latter being a metaphysical system as much as is materialism."¹ He observes that many writers who characterize idealism as unscientific are nevertheless not free from it, "because any seeking for a meaning in objective phenomena is idealism in the larger sense of the word."² Therefore to consider psychic phenomena as objects of study according to scientific methods is not contrary to realism as some naturalistic sociologists assume. "If," he concludes, "philosophy should be scientific, science should be philosophic."³

Looking at the problem of free will and determinism he believes it to be a mistake to regard it from the individualistic point of view. We should consider not the

¹ *Historico-Philosophical and Sociological Études*, p. 127.

² *Ibid.*, p. 128.

³ *Ibid.*, p. 133.

abstract individual versus nature, but the social individual versus nature, i. e. the individual in continuous interaction with other individuals. He says: "Events do not run by themselves in a certain direction, we are directing them . . . of course, the action of man upon the trend of history is not without an antecedent cause; but if my activity instead of being subjected, subjects things to itself, does it follow, that my activity, because independent of the general trend, must be independent of everything?"¹ To him the process of history is the interrelation of human activity with the process of nature.² "This," he says, "is why, although considering myself a determinist, I firmly believe in the necessity of individual interference with the process of history."³

These quotations sufficiently indicate Kareyev's attitude in the controversies upon subjectivism and objectivism which were carried on with his school. He spends much time in stating his position which here can be but briefly summarized. He does not advocate a subjective method but he emphasizes the subjective factor in society, which he believes cannot be disregarded by social science.⁴ He says: "The very principle of scientific objectivism demands that an object be studied from all sides in all its manifestations, and if we once find a subjective aspect in social facts we cannot escape from the conclusion that there is a subjective factor in sociology."⁵ Since, according to Kareyev, social life and all of history are but one and the same product of a coördinated conscious and

¹ *Historico-Philosophical and Sociological Etudes*, *Ibid.*, p. 301.

² The process of history is more fully treated in sec. iii, *infra*.

³ *Historico-Philosophical and Sociological Études*, p. 302.

⁴ *Cf. ibid.*, pp. 222 *et seq.*

⁵ *Ibid.*, p. 234.

unconscious activity of individuals upon nature and upon each other, therefore, the activity of everyone is a social factor. Thus to the sociologist the principal object of investigation should be the individual in his social activity. The thinking, feeling, willing individual, who creates social institutions, and experiences their reacting influence upon himself has the right to demand a sympathetic evaluation. Kareyev concludes:

The advocates of objectivism should recognize that in sociology there necessarily arises a subjective relation since the investigator meets with phenomena which he himself has experienced in his own life. On the other hand, those who recognize a subjective factor should limit themselves to such subjectivism as has just been indicated, and must bar any other.¹

In dealing with the epistemological aspect our author recognizes four forms of knowledge: *Numenological* knowledge, which seeks for the nature of phenomena; *phenomenological* knowledge, which has to do with the phenomena themselves; *nomological* knowledge, which determines the laws under which phenomena work; and *deontological* knowledge which gives principles to our ideals. Numenological knowledge is hypothetical and cannot be listed among the empirical sciences. "These phenomena, laws, and principles . . . these three comprise the knowable to us."² According to this scheme natural sciences are limited to questions of what is, but social sciences must consider both what is and what ought to be.

A general law in science, according to Kareyev, "is a formula in which is expressed a constant relation of co-existence, or sequence."³ There are in existence not only laws of nature but also laws of the human mind and laws of

¹ *Historico-Philosophical and Sociological Études*, p. 245.

² *Ibid.*, p. 195.

³ *Ibid.*, p. 115.

human society. All these laws are natural laws. The problem of the social sciences is to discover the laws both of individual activity and of social conduct. The latter being ethical in nature has an additional philosophical element.¹

In general Kareyev adopts Comte's classification of the sciences, but would improve upon it by dividing them into phenomenological and nomological sciences corresponding respectively to Comte's concrete and abstract sciences. The advantage of this change of nomenclature shows itself, Kareyev thinks, in distinguishing the philosophy of history from sociology, and assigning to each its own province. Thus history, which describes the consecutive process of events, is a phenomenological science; whereas the constant relations of its phenomena are its philosophical aspect and must be studied by a nomological science like sociology.² Broadly speaking, sociology is "the general theory of society,"³ and philosophy of history is "that abstract phenomenology of the cultural and social life of man which has to answer the questions: what has humanity received, and what will it gain from its historic life."⁴ Thus history, the philosophy of history, and sociology are seen to be closely related to each other, history supplying the material, sociology pointing out what is constant in the historic process and the philosophy of history deducing its teleological lesson from established facts.

Besides the study of the historic process, sociology has also to deal with the social life of man in particular, which brings it again into a cross relation with biology and with psychology. "Sociology," Kareyev says, "must be directly based upon psychology which thus becomes the connecting

¹ Cf. *Ibid.*, p. 127.

² Cf. *Ibid.*, p. 137.

³ *Idem.*

⁴ *Ibid.*, p. 154.

link between sociology and biology.”¹ Neither history nor sociology can dispense with psychology, especially social psychology. The spiritual culture of a people and its social organization are products of the psychic relations of individuals and constitute the province of social psychology. Psychology has its place, “on the border line of sociology;”² the latter still having a special task to investigate those special phenomena which cannot be explained either by biology or by psychology. Social organization, for example, he thinks a phenomenon so to be accounted for. Thus he says in another place: “Psychology has to do with spiritual culture, but sociology with social organization.”³

Kareyev sums up and presents the relation of the various aspects of sociology to biology and to psychology in the following table.⁴

	BIOLOGY	PSYCHOLOGY	SOCIOLOGY
1. Object	Species	Cultural group	Social organization
2. Indication	Organic structure	Culture	Social forms
3. Factors of unity	Physical heredity of structure	Physical tradition of culture	Conservation of social forms
4. Factors of change	Individual variation	Individual initiative	Freedom of the individual
5. Principal	Struggle for existence	Psychic interaction	Social solidarity

He gives but little attention to the statistical aspect of

¹ *Historico-Philosophical and Sociological Études*, p. 141.

² *Ibid.*, p. 143.

³ *Principal Queries of the Philosophy of History*, vol. ii, p. 8.

⁴ *The Nature of the Historic Process and, etc.*, p. 502. Cf. *Principal Queries of the Philosophy of History*, vol. ii, pp. 99-100.

sociology, and expects little from it for the reason that he believes "empirical generalization cannot pass for sociological laws,"¹ and that statistics at their best are but samples. Kareyev's conclusion is that the general truths discovered by the special social sciences must enter into the structural woof and warp of sociology which, on its side, must synthesize and weave together the diverse products of the social sciences; therefore sociology stands much closer to political theory, to law, and to economics, than to biology, upon which alone some writers would establish it.² Thus sociology is a science which has both a wider and a narrower province. "In the first sense," says Kareyev, "it is the discovery of laws governing all phenomena in society, i. e. its social-biological, social-psychological and peculiarly social aspects. This last aspect belongs to the more narrow province of sociology."³

What are the methods of sociology? Are they those common to all other social sciences, or has sociology its own methods? Our author devotes much space to answering these questions.⁴ The gist of his conclusion is this: It is not enough to speak about a logic, or a methodology, of the

¹ *Principal Queries of the Philosophy of History*, vol. ii, p. 35.

² Defending his synthetic view against eclecticism Kareyev says: "Eclecticism is given its proper sphere only in philosophy where the individual attitude of the thinker has an important part and where the union of the two systems is brought about by compromise. An eclectic takes from various systems what suits his taste and what answers his purpose even though this union of heterogeneous ideas be incompatible with sound logic and prove contrary to the facts. In science it is different: the scientist, examining the opinion of other scientists, accepts from them only that which is actually established in logic and in facts." *Introduction to Sociology*, 3rd ed., p. 131.

³ *Historico-Philosophical and Sociological Etudes*, p. 145. The author himself devotes his attention principally to what he calls the wider province of sociology.

⁴ Cf. his *Introduction to Sociology*, 3rd ed., pp. 180-230.

social sciences, for there exist such differences among them that each, and, therefore, sociology as well, must have its own methodology. Sociology is a pure and abstract science, and that fact must condition its whole methodology. Although scientific logic has but two methods, the inductive, and the deductive, which in their turn are nothing more than different expressions of synthetic and analytic thinking, particularly arranged for the attainment of scientific ends, yet those two methods may have various secondary forms, such as the hypothetical, the analogical, the dialectical and the comparative; and these are used in the various social sciences and in sociological theory. The word "method" has been employed loosely in speaking, for example, about a biological or a psychological method in sociology when what has been meant, is that sociology should be based upon biology or upon psychology. Sociology must not shrink from using the deductive method because it has been misused by metaphysicians. Nor may it abstain from using the inductive method merely because John Stuart Mill has rightly shown that induction as used by natural sciences may not be applied to social phenomena, which are always complex. Induction must adapt itself to its material. The comparative historical method is valuable and permits of the deductive method by generalization from particular cases. Kareyev concludes that "Neither the general logic of the social sciences, nor the methodology of history, political economy, law and politics, is sufficient to take the place of a sociological methodology which still awaits its complete development by sociologists."¹

II. *What is Society in its Various Aspects*

What is society? Is it an organism, or a mechanism, or a psychic phenomenon? Kareyev devotes much attention

¹ Cf. his *Introduction to Sociology*, 3rd ed., p. 222.

and effort to answer by a careful analysis of the various theories built upon one or another assumption. The gist of his critique and his own deduction will be considered in the following pages.

Is society an organism? Our author replies in the negative, making the following comparison between an organism and society:

An organism is a concrete whole, society is discrete. The parts of the former are unconscious beings, the parts of the latter are conscious beings. The ties of the one are material, and of the other spiritual. The former absorbs its parts, the members of the latter retain their individuality. The one changes arbitrarily, the other adapts forms to its needs through the activity of its members. In the organism there is developed a general organ of feeling with unity of consciousness; in society there is no common organ of feeling, the individual retains the consciousness of his ego and expresses his adherence to the whole by the form *we*. The organism is something limited in space, while society has no particular form. The former bears in itself the germ of its death; the latter is created for lastingness and for immortality. The development of the one takes place by a differentiation of its whole at the expense of the integrity of its parts; the progress of the other consists in the development of the individual by the aid of the whole. The former postulates no goal; the latter lives by its teleological ideals.¹

In this manner Kareyev disposes of the organic view of society. He believes that the Darwinian principles which hold true in animal society should not be applied to human society. He says: "Darwinism cannot be unreservedly accepted by social science because the sociological principle of solidarity, without which even the smallest society cannot

¹ *Principal Queries of the Philosophy of History*, vol. ii, p. 88.

exist, is an antithesis to the biological law of the struggle for existence.”¹ Where once there was animal struggle, now psychic interaction and social solidarity have become prevalent. Where once there was organic heredity, now cultural and social traditions are the determining factors in human society. Where once there was individual variation of the organism, now individual human initiative and man’s independence in social organization are substituted in the historic life of mankind. Thus in human society the process of natural selection,—which consists in individual variation perpetuated through heredity and by the survival of the fittest in the struggle for existence,—is offset by another process which begins in individual initiative but has a chance of becoming traditional through psychic interaction and resulting changes in social organization, which tend to become permanent if there is an increasing solidarity of the interacting individuals. This social process may be progressive or regressive, as also natural selection may be which does not always perfect the organism, but merely adapts it to its actual environment. Upon this reasoning Kareyev establishes the principal differences between human and animal societies. He does not deny that animal societies have some psychic characteristics similar to those which are found in human society. “Animal social forms are the transitional stages from organism. They have some psychic characteristics similar to those which are found dominant in human society. He says: “animal social forms are the transitional stages between an organism and a human society . . . the social forms of animals are, biologically speaking, peculiar to each species, its members cannot pass into other forms.”² Man, on the contrary, can

¹ *Principal Queries of the Philosophy of History*, vol. ii, p. 99.

² *Ibid.*, p. 103.

simultaneously be a member of several abstract wholes. "The animal is bound to its visible aggregates, while man can become antagonistic to the acknowledged views of his society; the animal subjects itself, and enters struggles which are purely concrete in nature."¹ Thus society, according to this reasoning, is not principally a biological phenomenon nor a mechanical aggregation of independent individuals. The individuals are themselves social products, entering instantly into a heritage of tradition and culture, held together by psychic interaction and continuing to change with the aid of individual initiative. Society, therefore, is largely a psychic phenomenon: "every social organism is nothing else but a certain organization of human interrelations through which the conscious or unconscious will of human life is manifested."²

What then is society? Says Kareyev:

It is not entirely an organism, nor yet completely a development of art, but social evolution points to what it should be, namely, a living product of art, a harmonious coördination of individuals, possessing solidarity without sacrificing their individuality, and remaining individualistic without being to one another antagonistic.³

Social phenomena begin with the animal family in which temporarily several individuals live under the authority of parents: this is the biological aspect of the social aggregate. Beginning with the establishment of customary relations, which are transmitted to new generations by means of education, we have the psychological phenomena of social aggregates. And beginning with accidental and unstable massing or herding of animals for self-defense and for sub-

¹ *Principal Queries of the Philosophy of History*, vol. ii, p. 110.

² *Introduction to Sociology*, 3rd ed., p. 131.

³ *Historico-Philosophical and Sociological Études*, p. 278.

sistence we have the inception of strictly social phenomena. Thus social phenomena extend over a wide range, from the natural growing of animals, up to and through civil society with its state, its law and its industrial co-operation.¹

Our author also pays some attention to the anthropological aspect of society. He distinguishes between races in the physical sense, and in the cultural sense, the former being principally a product of physical environment, while the latter are a product of superorganic environment, i. e. of a continuous psychic interaction. The psychic characters of race are more enduring than the physical characters are. Races cannot keep their unity unless their members remain in continuous psychological interrelation, and this of course becomes impossible when great distances begin to separate them. There is no necessity for racial decay so long as there is harmony between the superorganic environment and the increase of the race; abnormal use, i. e. exploitation, of the former inevitably leads to racial decay. Nationality should not be confused with race. There may be a natural nationality developed out of race coördinated with a particular culture, or there may be an artificial nationality created by political coercion. This latter kind of nationality however is in constant danger of disintegration.² Kareyev's notion of society is thus in harmony with his synthetic view in sociology. Society is a complex product of biological, psychological and environmental factors, but the psychological factor performs a dominating, organizing function manifested through the individual units in society.

¹ Cf. *Principal Queries of the Philosophy of History*, vol. ii, p. 19.

² For a detailed discussion of the author's anthropological aspect of society, cf. *Principal Queries of the Philosophy of History*, vol. ii, pp. 111-156.

III. *The Nature of the Historic Process and the Rôle of the Individual in History*

To the nature of the historic process Kareyev paid particular attention, and he incorporated the results of his investigations in one of his larger works bearing the same title as that of this section. He does not attempt to deal with the historic process metaphysically, but confines himself to its pragmatic aspect. The pragmatic process of history, he states, "consists in the generating activity of other people."¹ "In the historical process," he says elsewhere, "there take part human individuals united in societies."² The contents of the historic process being volitional acts of individuals and social changes, it becomes necessary to study the nature of man in his social reactions, especially in the psychic aspect. "Our task consists in finding out how one individual reacts upon other individuals, and why particular cases of such activity present among themselves such great differences."³ Here he also raises the question whether the *hero* and the *mob* must be considered as two distinct and separate entities in a state of psychic interaction? He concludes: that "the *hero* (a) must be placed over against other units (b, c, d, etc.), i. e. must be measured up with homogeneous and measurable factors and not with the mob; (b) the sum of units (b, c, d, etc.) is not an indivisible whole."⁴ There is a continuous mental interaction among individuals and these in their entirety make up pragmatic history. Thus the nature of the historic process is essentially psychological. Every action is a creation called forth by some

¹ *The Nature of Historic Process and the Rôle of the Individual in History*, 1st ed., p. 376.

² *Historico-Philosophical and Sociological Études*, p. 148; cf. also p. 152.

³ *The Nature of the Historic Process*, etc., p. 376.

⁴ *Ibid.*, p. 377.

previous inner or outer stimulus. "Nevertheless," says Kareyev, "each of these depends in addition upon an individual psychic process."¹

For example, the *hero* reinterprets the impressions received by him from the mob, and the impressions received by the mob from him. These in their turn are reinterpreted more or less individually before reacting upon members of the mob. The individual, therefore, is not necessarily a passive tool of history, nor is he merely a reflection of environment. "In a word," concludes Kareyev, "we acknowledge a relative independence and originality in the individual, although we do not deny the general importance of outside forces and influences."² The inequalities of reaction among persons under apparently similar conditions are attributable, on the one hand, to the complexity of the various inner and outer factors, and, on the other hand, to the individual differences among the members of society. Kareyev spends much time analyzing the sources of these differences, and he makes an attempt to divide the differing individuals into classes. Briefly stated, differences of individual activities under apparently similar conditions are attributable: (1) to the degree of dependence of a particular response upon other responses; (2) to possible expectation that an action may produce a definite response although it is a complex result of several actions; (3) to the relative consequences caused by an action as compared with other actions. In the first case, the operative cause-action is belittled in its importance by not acting alone; in the second case the importance of the operating cause-action is exaggerated. In both of these two cases, however, the fact of relativity in both cause and effect

¹ *The Nature of the Historic Process*, etc., p. 378; cf. p. 269.

² *Idem*, cf. pp. 277 and 283.

is apparent. In the third case there is an element of relative evaluation attached to the action, which increases its importance. To these three our author adds a fourth cause of difference in individual activity, which he sees in individual power of invention.¹ Although it is one of the problems of social science to classify individual minds into categories or types, Kareyev confesses his inability to do this at present, and makes but a rough classification into highest and lowest types of mind. The principal characteristic of the former is ability to plan complex activity and to coerce others to execute the plan. The lowest type is characterized by incapacity for individual initiative and willingness to be the tool of another's will.²

Thus does Kareyev analyze the nature of the pragmatic process of history. It is a continuous psychic interaction, wherein the activity of some of the members of society calls forth the activity of the others. But this influence of some persons upon others is subjected in a degree to individual change before it, in its turn, becomes an antecedent of some new activity. The degrees of development attained by individuals, as well as their social satisfactions, being thus different, the changes they produce are similarly different. The *ego* is but seldom introduced to any marked extent into the trend of events. In most cases it is largely a reflex of some one else's activity and will. Nevertheless subjective change injected into something new is the pragmatic process of history, and this fact demands a close analysis of the rôle of the individual in the historic process. To it accordingly Kareyev devotes much space. The problem is to determine the rôle of the individual in the cultural process of history," i. e. in those changes which take place in the

¹ Cf. *ibid.*, p. 305.

² Cf. *ibid.*, pp. 346-347.

material, spiritual and social forms of the life of a people.”¹ Social culture is nothing else but the coördination of continuously similar repetitions of thoughts, acts and relations of the individual members of society, subject to the psychic interactions of these members, and to conditions of environment.² What rôle does the individual play in this process, and how is his creative activity compatible with the process of evolution? These questions he raises and proceeds to answer.

Beginning with the last question he agrees that from the evolutionary point of view the change of one cultural fact by another can not be exclusively the product of human will. Evolutionary changes have their lawful relations; and yet, Kareyev reminds us, “the elements of culture develop not only according to their own laws, but also under outer influences, to which class belongs also the conscious influence of the human will.”³ The activities of man which result in cultural changes appear to have not only genetic, but also teleological elements. Together these form a coördination of causes which, in their entirety, our author calls “the sum of ends.” The general end is nothing pre-existing, it is related to individual ends and purposes as is the sum to its components.⁴ Cultural evolution should not be confused with organic evolution. In cultural evolution, individual initiative and its imitation become factors. It is, therefore, necessary to distinguish among causes which condition the spread of innovation by means of imitation. The gift of invention is not pos-

¹ *The Nature of the Historic Process*, etc., p. 596.

² *Ibid.*, p. 477. Cf. *Principal Queries of the Philosophy of History*, vol. ii, p. 55.

³ *Ibid.*, p. 597. Cf. also pp. 427-428.

⁴ Cf. *ibid.*, p. 598.

sessed by each individual, and any innovation must have a favorable environment, lacking which it cannot spread. The environment is not merely material, although nature and economic and material forces do determine man's action to a limited degree. Kareyev calls special attention to such facts as habits, customs, passions, prejudices, and all kinds of feelings and ideas which exert an influence upon individual initiative. These psychic factors and social forms Kareyev calls a super-organic environment.¹

He says: "the tendency of super-organic environment is to deprive the individual of his independence and originality, as the individuating principle consists in the safeguarding not only of individual independence but also of the changes in cultural-social forms proceeding from individual initiative."² Individual variations may be either unconscious and unintentional or, again, conscious and intentional.³ Both unconscious and conscious changes are observable in the development of language, of law and of religion. Such exist also in the natural and artificial coöperation of economic life, and in the development of political institutions. What is the relative extent of the conscious and the unconscious factors, it is difficult to determine, because every social phenomenon is very complex. Also the historic process itself becomes an additional factor in the lives of individuals

¹ Kareyev adopts this term from Spencer. But he informs it with new content. He says: "We adapted this term to cultural-social phenomena as to an environment of a particular kind which surrounds man in society and conditions his activity." *The Nature of the Historic Process*, etc., p. 475. He calls super-organic environment also secondary environment. Cf. *Principal Queries of the Philosophy of History*, p. 64.

² *Ibid.*, p. 598.

³ Kareyev points out that unconscious and unintentional variations are consistent with the organic viewpoint in sociology; not so, the conscious. Cf. *idem*.

of every generation.¹ Tradition is that aspect of the super-organic environment which shapes the life of generations and is the strongest obstacle to individual initiative. Still, even the firmest tradition gives to the individual a certain degree of liberty and itself undergoes considerable unnoticed changes. The relative stability of social tradition maintains unity in culture and in social organization and is of the same importance to society that organic heredity is to an animal species in maintaining unity in type.

Traditional forms, however, change through the accumulation of individual variations by means of imitation. "Thus, within the boundaries of tradition individual invention has certain liberties; changes are introduced into traditional forms by collective and individual initiative."² However, not every innovation is imitated. The new idea may not become sufficiently known, or it may not fill a felt need or want in life. On the other hand, an innovation is at times received not because there is any positive need for it, but simply because there are no forces opposing it.³ Cultural tradition then, with its imitative repetition, is the principal phenomenon of the super-organic environment. Opposed to it is individual initiative with its innovating inventions, which can have their roots only in individual life, in an innate capacity for independence and creativeness. Outer conditions either curb or develop this ability; but they can never create it.

Summing up this section in which are presented Kareyev's

¹ Cf. *Historico-Philosophical and Sociological Études*, p. 153.

² *Ibid.*, p. 505. Kareyev recognizes the similarity of his views to those of Tarde; he says: "When I became acquainted with the works of Tarde I recognized the similarity of our thinking." *Ibid.*, p. 508. Kareyev was, however, inclined towards the study of imitation by the works of Mikhalovsky, which fact he acknowledges appreciatively.

³ Cf. *ibid.*, pp. 440-441.

views on the nature of the historic process and the rôle of the individual in history, we see: (1) that the historic process has two aspects, the pragmatic and the cultural. These two are not parallel currents but are continually crossing each other and are reciprocally conditioned by continuous interaction. In the pragmatic process of history the agents are human individuals; in the cultural process they are cultural forms. (2) The rôle of the individual is not to be understood by the opposition: the *hero* versus the *mob*. All individuals play both an active and a passive part; they are not equal, they have a wide range of differences. (3) Individual activity and cultural evolution are in continuous interaction, but they stand in various relations to each other, presenting proportions to which a graded scale is applicable. Finally, the individuating principle manifests itself with particular force in a small group, whereas cultural tradition is spread by the masses or by the majority.¹ From the nature of the historic process Kareyev believes that deductions may be arrived at upon which a scientific theory of progress may be erected.

IV. *The Sociological Problem of Progress*

(I) ELEMENTS OF A SOCIOLOGICAL THEORY OF PROGRESS

Sociology strives to attain to a purely objective knowledge of social evolution. Hence its deductions as to a possible future are based not upon subjective wishes but upon facts independent of individual bias. In the idea of progress it becomes necessary to distinguish between objective-scientific and subjective-ethical aspects. Some schools of sociology have tried to eliminate the subjective-ethical aspect as unscientific, but it is found nevertheless in the theories of even

¹ Cf. *ibid.*, p. 626.

the extreme objectivists.¹ According to Kareyev the idea of progress is but a certain subjective concept of evolution, it is psychological and ethical and is without metaphysical presuppositions. He says: "The social ideal must be compatible not only with ethical, judicial, economic and political notions, but it must also be psychologically and sociologically possible, its realization must be probable and it must be viewed as the necessary resultant of the whole process of social evolution."² The practical significance of the sociological idea of progress would appear in an evolutionary formula, which should present both the goal and the means of progress. A theory of progress must have both deontological and nomological component elements, and these again must stand in such a coördinated relation to each that the theory will not expose the knowledge of the end without the knowledge of the means. The goal without the means becomes a mere ideology. And the means without the goal are without purpose. He believes that a goal of progress cannot be constructed without a subjective aspect. He says:

Each condition in life is of a many-sided complexity, whose elements in part favor and in part obstruct progress; the same thing may exert different influences in various stages of its progress. Therefore a subjective discrimination becomes necessary. A formula of progress must present merely the general tendency and not particular means of progress, for such will necessarily differ in various cases; under various conditions. In taking a broad view, such as would cover the complete de-

¹ Kareyev claims that an optimistic attitude on the part of a materialistic evolutionist is not warranted by the actual data and that it is introduced by the subjective opinion of the investigator. Cf. *Introduction to Sociology*, 3rd ed., p. 369.

² *Ibid.*, p. 383.

velopment of personality and everything that aids it, the sociologist will avoid one-sided views. These in part account for the diversity of views on progress.¹

It also becomes necessary to determine in what this development consists and under what conditions it is possible. Then also it becomes necessary to make clear those particular processes which develop in man an ideal individuality; and again what outward conditions are necessary for the purpose. Finally, having investigated the laws which make these processes possible, and having refused to accept abstract ideas, one may develop a completely scientific theory of progress. A formula of progress cannot be arrived at by the *a posteriori* method alone. Induction and a purely objective method may give a formula of evolution but not one of progress. The investigator has to approach his problem *a priori* in harmony with an ideal of human life.²

(2) WHAT IS PROGRESS, AND WHAT IS A PROGRESSIVE
PROCESS?

Kareyev has written a good deal on these questions. In his various works are found descriptions and definitions of progress and of the progressive process of history in the sociological sense. The gist of these descriptions and definitions follows:

¹ Kareyev gives five reasons for the existence of great diversity in the formulas of progress. "(1) Over-emphasized subjectivism creates a one-sided formula; (2) the desire to deduce a formula directly from the facts presented makes it only applicable to the organic aspect; (3) this latter condition hinders the bringing together of the separate formulas under a common denominator; (4) insufficient acquaintance with the laws of nature, of mind and of society results in a disregard of important aspects of progress; (4) finally, the striving towards simplicity makes formulas too narrow." *Principal Queries of the Philosophy of History*, vol. ii, p. 208.

² Cf. *ibid.*, p. 202.

"Progress is nothing else than the interpretation of the meaning of life by postulating higher and higher goals, and the attainment of these ends by the aid of a growing culture and a social organization which makes possible an increasing reaction upon nature."¹ Enlarging upon this view of progress he says elsewhere in the same book. "Progress is such an evolution as on the whole corresponds to our ideal. A true philosophy of progress must be a synthesis,—of faith in the possibility of progress, with the knowledge of the laws of evolution."² Therefore progress is that which gives man new means in the struggle for existence. The struggle is viewed, however, not as a contest with one's neighbor but as a conflict with environing nature. By increasing his knowledge of technical inventions for the attainment of the means of life man ennobles the struggle for existence. Such knowledge manifests itself in sympathy, altruism, conscience and the sense of justice. These counteract individual struggles among men; they create in social organization forms of social life, and regulations of social relations and coöperation, that make individual struggle unnecessary and harmful. Such progress, however, is only possible when psychically developed individuals have entered into spiritual relations and have become units in a society.³ Thus by progress is meant either the perfection of the individual in his psychic relations, or the improvement of material relations among members of society, or a gradual rise of social forces that are favorable to the development of the individual and to his control and exploitation of nature. In this manner progress has its intellectual, moral, social and economic phases.

¹ *Historico-Philosophical and Sociological Études*, p. 206.

² *Ibid.*, p. 351.

³ Cf. *Principal Queries of the Philosophy of History*, vol. ii, p. 95.

Synthetizing these various phases, Kareyev gives us the following formula of progress: "Progress, on the one hand, is the gradual elevation of the standard of human development accompanied by conditions which make it possible for a larger and larger number to attain this standard; on the other hand, it is the most just division of labor among mankind."¹ In this sense the prototype of progress appears to be individual psychic development "which is not only an objective fact of observation but also a subjective fact of consciousness."² Thus, in its narrower sense, progress does not consist in organic evolution accomplished by means of organic heredity, but in superorganic evolution ever changing through criticism and through the creativeness of the human mind and perpetuating itself in tradition.³ The interchange of thoughts, feelings and traditions is the first and principal condition of mental progress. The union of individuals for the attainment of general ends creates social solidarity and organization. It eliminates individual struggle from within the aggregate and through coöperation it makes individual moral and mental development possible.⁴ Kareyev emphasizes the psychic aspect of progress because he believes that man's ideals and spiritual interests far outweigh his material interests. He differs from any philosophers who may be said to teach that man thinks in order to eat. In Kareyev's theory man eats in order to think.

The development of spiritual interests in man is, however, unthinkable apart from political forms that emancipate

¹ Cf. *Principal Queries of the Philosophy of History*, vol. iii, p. 214.

² *Ibid.*, p. 215.

³ Cf. for more detailed discussion of super-organic evolution, sec. iii, *supra*, pp. 189 *et seq.*

⁴ Cf. *Principal Queries of the Philosophy of History*, vol. ii, p. 223.

the individual from subordination to the aggregate and transform him into a free member of society. So the development of moral convictions in man is unthinkable without a coincident progress of justice, which protects the individual from arbitrary force that would make him subject to law alone. So the abolition of the physical or animal struggle for existence is unthinkable without economic institutions that can emancipate the individual from the cruder forms of exploitation and transform him into a coöperating member of society, himself conscious of social solidarity. These separate processes of political, moral, social and economic development are integral parts of the complex process of social progress, and mutually they condition each other.

This general concept of progress Kareyev divides into five particular concepts. He says:

Mental progress is educating the capacity for realizing spiritual interests and improving our views of the life of the world. Moral progress is educating the power to act according to conviction and to improve the principles of ethics. Political progress is the development of freedom and the betterment of the state. Judicial progress is the development of equality and the betterment of the institutions of law and justice. Economic progress is the development of solidarity and the betterment of ways of obtaining the means of existence.¹

Kareyev realizes that all these aspects of progress may develop simultaneously and concurrently only under peculiarly favorable conditions. But clearly, it is because such conditions have not existed heretofore, that progress has been so unstable. He adds, however, that "progress is a process which gradually improves itself, i. e. it gradually

¹ Cf. *Principal Queries of the Philosophy of History*, vol. ii, p. 239.

creates new means for its own stability, which man has the power to realize.”¹

In the actual history of society, progress and regress have been realized principally in crises. “We call progressive that crisis which breaks up regressive evolution; and we call regressive that crisis which breaks up progressive evolution.”² Throughout history nature has made no leaps in the evolution of society from the animal stage to ideal society, from occasional aggregations of savage to well organized civilized nations. There have been, however, certain transitional stages between the beginnings of social aggregation and modern society. These our author classifies in the following manner:³

(1) Primitive societies of savage tribes are characterized by the rule of force, by antagonism, by the struggle for existence, by particularism and individualism. This is the stage of anarchy;

(2) Societies, which maintain the rule of crude force, of antagonism and the struggle for existence, but which are already centralized, although by force, and differentiated through the appearance of caste and by economic exploitation. This is the stage of the union of despotism with anarchy.

(3) Societies wherein the rule of crude force is diminishing, where antagonism and the struggle for existence are growing less fierce. These are more disciplined; authority is acknowledged in them and subjection to it is more conscious. This is the stage of the weakening of despotism and anarchy;

(4) Societies in which crude force, antagonism and the

¹ Cf. *Principal Queries of the Philosophy of History*, vol. ii, p. 241.

² *Ibid.*, p. 201.

³ Cf. *ibid.*, p. 244.

struggle for existence are still more suppressed; wherein the individual is gradually being liberated from the control of his environment, and wherein society is being freed from the rule of caste. In these, societies voluntary subjection to authority and a civil consciousness are on the increase. This is the stage of the coördination of freedom and of order.

(5) Ideal societies would be characterized by complete solidarity, by the rule of law and by coöperation, by individuation and by equality. This would be the stage of the rule of truth and justice.

In these transitional stages a gradual decrease of animal characteristics is noticeable. Stages one, two and three approach the conditions of an organism and are in danger of entering upon an evolution without reformations and without those progressive crises which would advance them to the higher stages that are both more stable and more fit for progress. "A new humanity," says Kareyev, "seems to strive towards cultural cosmopolitanism in spite of the nationalistic trend of recent decades." ¹

3. THE GENERAL LAW OF PROGRESS

"The general law of historic progress," according to Kareyev, "can be nothing else than the expression of the possible way of human progress." ² The goal of progress is the development of individuality, and in this sense progress consists "in the self-liberation of personality through the recasting of cultural ideas and social forms of institutions in the direction of a set goal." ³ But since it is the general tendency of the super-organic environment to repress individual initiative a conflict seems to be inevitable.

¹ Cf. *Principal Queries of the Philosophy of History*, vol. ii, p. 252.

² *Ibid.*, p. 256.

³ *Ibid.*, p. 262.

Progress therefore can be achieved only through a compromise between the individual and the social interests, and by remaking super-organic environment to meet the needs of the individual. "History," says our author, "consists in the evolution of the super-organic environment which is a product of the non-rational activity of man. The remaking of this environment by critical thought is the only definitely progressive factor of history."¹ In designating the law of progress as a compromise of opposites, Kareyev approaches the Hegelian idea, especially when he says:

Thesis is the self-conditioning of the individual in the face of social and cultural forms; antithesis is the subjection of the individual's self to ideas and institutions of super-organic environment; synthesis is the subjection of the super-organic environment to the individual, and the self-conditioning of the individual with the aid of culture and social organization.²

Progress, then, is possible only when conscious activity outbalances the unconscious; when purposefulness displaces arbitrariness. Progress is based upon critical thought and not upon some hap-hazard activity of mind. Arriving at his final conclusion as to progress and as to its general law, Kareyev says:

progress is a forward movement through the development of opposites, and such is the formula of social progress. In order that something may progress it is necessary to deny what has preceded it. In social progress we may differentiate two evolutions: The evolution of organizations, consisting in their in-

¹ Cf. *Principal Queries of the Philosophy of History*, vol. ii, p. 270.

² *Idem*. Kareyev claims not to apply the Hegelian formula to the actual process of history as did Hegel, whom Kareyev thinks mistaken in this. Kareyev adopts merely a rational construction of an abstract formula of progress.

tegration and differentiation; and the evolution of the individual. These two are antagonistic developments. Organization strives to transform itself into an organism which absorbs the individual, the individual on the contrary strives for freedom. Viewing social progress from this aspect we may give it this formula; first stage: freedom of the individual from social control; second stage: negation of freedom through the rise and development of institutions which tend to transform society into an organism; third stage: negation of social control by means of adapting institutions to individual self-direction.¹

The process we already have indicated, and it is analogous to intellectual progress in the formation of the individual's opinion of the universe. In the first stage weak logic is controlled by a strong imagination, since imagination develops much faster than logic. During the second stage imaginary concepts still predominate over critical thought. In the third stage critical thought gradually becomes strong enough to secure control of the imagination. Concretely we see the helpless individual of primitive society struggling to survive by the aid of an imperfect social organization which soon, however, becomes stronger than himself and begins to control him rigidly, until by the aid of coöperation the individual, in his turn, recasts society more in harmony with individual interests.

The law of the compromise of opposites shows itself also in the political, judicial and economic aspects of social organization. In politics liberty first approaches anarchy, then there is a negation of liberty by the development of despotic control, and finally there comes a negation of despotism by the establishment of order through liberty.

In law, by reason of its close relation with morals, progress is analogous to the progress of ethics. First there is

¹ Cf. *Principal Queries of the Philosophy of History*, vol. ii, p. 293.

equality of all because law is non-existent; then law is established upon non-equality; finally, equality is re-established upon law.

In economic relations there is first uniform solidarity because of the severity of the struggle for existence. Then there is caste solidarity for the purpose of exploiting the weaker classes and using them as tools. Finally, there is an increasing general solidarity and the gradual cessation of the exploitation of the many by the few.¹ This briefly sums up Kareyev's idea of social progress in its various phases. Here is the goal of his sociological theorizing.

V. Conclusion: Kareyev and the Subjectivist School of Russian Sociologists

With Kareyev we may close our analysis of the subjectivist school of Russian sociologists. The four authors studied represent the whole range of ideas advanced and developed by this school.¹ If we ask what there is in common in the works of the four writers analyzed, we may answer that they all adhere to the principles of the positivist and empiricist philosophy which they believe to be compatible with the subjective-teleological ideas introduced by them into sociology. Lavrov is the extremist. He has introduced a socially evolved, categorical imperative. All have adopted Comte's classification of the sciences, except, however, that they regard psychology and ethics as transi-

¹ Cf. *ibid.*, pp. 244, 245 and 293.

² Other authors of this school who may be mentioned are Ivanov Rasumik, who analyzed the historical rôle of the individual as pictured in Russian literature and the rôle of the intellectual class in general as a factor in social progress, and whose principal works are: "History of Russian Social Thought," "The Meaning of Life," "What is the Makhaevchina"; and S. N. Bulgakov, a converted Marxist, who advocated the subjectivist point of view in his articles in *Questions of Philosophy and Psychology*, 1896, and in the *New World*, 1897.

tional and relatively independent sciences, lying between biology and sociology. Although they have written much on sociological method they have not gotten far beyond what was said upon this subject by John Stuart Mill. All of our writers reject in principle the deductions of the biologic-organic school of sociology, and of the impersonal mechanistic view of the dialectic school of economic determinists. They all agree that the dynamic of the social process is a complex of psychical, biological, physical and economic forces. They emphasize, however, the psycho-social activities and the work of the critically-minded individual as determining factors in progress within organized society.

Mikhalovsky should be recognized as the most original among Russian sociologists. He alone of this school developed an independent system. Lavrov, Youzhakov and Kareyev were principally synthetizers, emphasizing one or another of the various aspects of sociology and occasionally introducing a new idea. To Kareyev belongs the honor of being the most thorough and extensive scholar, but to Lavrov must be conceded priority in originating that trend of thought and method which the Russian subjectivist school of sociologists claims as peculiarly its own. Whether these writers succeeded in elaborating a complete organic synthesis of sociological theories may be questioned. It is our impression, however, that they did make a good start in this necessary work which at present is being carried on by many sociologists both in Europe and in America. The theoretical contribution of Russian sociology should, however, not eclipse the fact that first and foremost the subjectivist school of Russian sociology was a rationalizing effort to give intellectual bearing to the social-political movements of a people aspiring to found a democracy. This fact gives it a definite stamp, and makes it peculiarly and above all a truly national Russian Sociology.

PART III
MISCELLANEOUS SCHOOLS AND TRENDS
OF RUSSIAN SOCIOLOGY

CHAPTER I

THE OBJECTIVIST SCHOOL OF SOCIOLOGICAL CRITICISM (THE ORTHODOX MARXISTS PLEKHANOV AND LVOV)

THE popularity of the subjectivist school with its populist propaganda and with its hope of a special, non-capitalistic, social-economic evolution of Russia was diminished by the introduction of the Marxian philosophy of social evolution. Russian Marxism both possessed a sociological theory and made a practical appeal. The latter was directed to the rapidly increasing city proletariat, whereas the former was seized upon by the intellectual classes and by them exploited for an attack upon the subjectivist sociology which in the eighties had reached the zenith of its popularity. Hegel, Feuerbach and the English and French materialists had prepared the Russian mind for the philosophy of Marx. The readiness to embrace the Marxian creed is the more easily understood when we remember that the desire of the Russian intellectuals was to cast off the yoke of autocracy and to emancipate the individual. Marx's social philosophy showed that changes in the forms of production are followed by an inevitable change of social and political institutions.¹ The Marxian or Objectivist Sociologists were divided into two factions. The orthodox, who were championed by the "father" of Russian Marxism, Plekhanov, and his pupils and friends² and the

¹ Cf. Plekhanov, *History of Russian Social Thought*, Petrograd, 1914, vol. i, p. 129.

² Of these we may mention Lenin, (Ulianov,) Patressov, and Maslov. They voiced their opinions principally in the socialist monthly, "The Contemporary World," and in other publications.

heterodox Neo-Marxists and Revisionists, of whom Struve and Tugan Baronofsky are the principal exponents.

I. *Plekhanov's Marxist Sociology*

Plekhanov¹ is not only the first but also the foremost of the Orthodox Marxist School in Russia. His principal sociological work is *On the question of the development of the Monistic Conception of History*; it is inscribed to Mikhailovsky and Kareyev as the surviving champions of the subjectivist school and its avowed purpose is to controvert their views by developing the Marxian monistic conception of history and social evolution. A brief analysis of Plekhanov's theory of social evolution follows:

1. Plekhanov's critique of the non-Marxian subjective sociologists and Russian populists.
2. Plekhanov's philosophical and methodological presuppositions.
3. Plekhanov's theory of history or of social evolution.

I. PLEKHANOV'S CRITIQUE OF THE NON-MARXIAN SUBJECTIVE SOCIOLOGISTS AND RUSSIAN POPULISTS

Plekhanov who, to begin with, was an ardent Russian populist, became in the early eighties after his conversion to Marxism, just as ardent and militant an advocate of this new political and social creed. His attacks were directed against the leaders of the Russian populist movement and he ridi-

¹ Georgy Valentinovitch Plekhanov (1857-) is one of Russia's famous revolutionists; he founded the Marxian wing of Russian Social Democracy. In 1880 he was forced to leave his native land, nor has he been allowed to return thither. Being considered legally an undesirable citizen, he was compelled to write under various pseudonyms as N. Beltov, Volgin, Valentinov, etc. He enjoys an international reputation as Russia's most scholarly Marxist. His writings cover the various phases of the Russian socialist and revolutionary movement and are written for propaganda or for polemical purposes.

culed as utopian their hope for a special non-capitalistic social evolution of the Russian people.¹ Plekhanov classed the Russian populist leaders among the French and English utopian socialists of the eighteenth and early nineteenth centuries. The populist movement received its intellectual bearings from subjectivist sociology, especially that of Lavrov and Mikhlovsky,² and, therefore, Plekhanov pours out his wrath fiercely against this school in a manner which, to a foreign observer, seems hardly warranted but which, nevertheless, proves how intensely nationalistic these Russian sociologists were. Thus the "objectivism" of the Marxist school proves to be highly colored by passionate subjectivism which actually discredits its claim as a truly scientific theory.³ Plekhanov's attack upon the subjectivist school is directed first upon its "subjective" method which

¹ This hope even Marx had cherished at the time of the Russian transition period which began with the emancipation of the serfs. He expressed his opinion in this regard in a letter to the editor of the "Otechestvennyy Zapiski". This letter was later used by Mikhlovsky and other populists as an argument against the Russian Marxists. Plekhanov explains away Marx's wording in that letter which he claims was written not as an argument but as a letter of consolation, intended for the purpose of quieting the troubled young Mikhlovsky, who worried over the inevitable doom of the Russian commune. "It was necessary," says Plekhanov, "to show the young Russian author that dialectical materialism does not condemn any nation to anything, that it does not show a general and 'inevitable' way for all people and at any given time; but that the development of any given society always depends upon the coördination of the inner social forces, and therefore it is necessary for every serious man to study the existing coördination, for only such study can show what is determined or indetermined for a given society." *On the Question of the Development of the Monistic Conception of History*, 4th ed., p. 218.

² *Vide supra*, pp. 39-40.

³ This intense polemical spirit shows itself in all of Plekhanov's sociological writings and especially in his book, *A Critique of Our Critics*, Petrograd, 1906.

he identifies with the idealists' presupposition that ideas of individuals shape environment and history and not that environment conditions and determines man's ideas.¹

Secondly, Plekhanov attacks the subjectivists' idea that society is the product of the interaction of social forces or factors. "What is 'a social-historical factor'?" he asks. His answer is that

"a social-historical factor" is an abstraction, the conception of it arising by means of abstraction and because of this abstracting process, the different aspects of the social integer take on the appearance of particular categories, and the different phenomena and expression of activity of the social man, as morals, law, economic forms, etc., are transformed in our mind into particular forces, as if they were advancing and conditioning this activity, which is its final or ultimate cause.²

Therefore interaction of the factors explains nothing; it only leads one into a vicious circle which reduces itself to the formula: that environment creates man and man creates environment. Or, in other words, "the development of human nature interprets itself through its collective needs, and on the other hand the development of collective needs interprets itself through the development of human nature."³ In order to free oneself from the subjectivistic eclecticism and to escape the vicious circle in which it has continually been moving, Plekhanov says that

¹ *On the Question of the Development of a Monistic Conception of History*, p. 26. Plekhanov thinks that even Comte did not emerge from this vicious circle, but that, despite all his positivistic pretences, he only "chewed over" the ideas of St. Simon, and the ideas of the anonymous author of "De la physiologie appliquée a l'amélioration des institutions sociales." Cf. *ibid.*, pp. 54-56.

² Cf. *On the Question of the Development of a Monistic Conception of History*, p. 9.

³ *A Critique of Our Critics*, p. 311.

we must find that historical factor which created both the characteristics of a given people and its form of government, the factor that created the very possibility of their interaction. If we find such factor, we shall have the correct point of view sought for, and then without any difficulty we shall solve the disturbing contradiction.¹

As the reader may readily surmise, Marxism is the "point of view" that will furnish the key to the mysteries of the universe!²

The role of the exceptional individual as a factor of progress was emphasized by the subjectivist school.³ This view Plekhanov attacks as an antiquated utopian doctrine, which cannot successfully be maintained against the criticism of dialectical materialism. "The peculiarities of reason of a given time can be understood only in relation to the peculiarities of reason of the preceding epoch."⁴ At its best, therefore, the genius surpasses his contemporaries only in that sense, that "*he earlier than they grasps the meaning of new generating social relations.*"⁵ This, Plekhanov believes, justifies him in seeing in the genius nothing but a product of his environment. And since the dialectic process of evolution has no set goal, everything being in the process of change, formulas of progress have no meaning whatsoever.⁶

¹ Cf. *On the Question of the Development of a Monistic*, etc., p. 11. Cf. also p. 166.

² *Vide infra*, p. 213 et seq.

³ *Vide supra*, p. 202.

⁴ *On the Question of the Development of a Monistic*, etc., p. 173.

⁵ *Idem*. Italics are Plekhanov's.

⁶ Cf. *ibid.*, p. 87.

2. PLEKHANOV'S PHILOSOPHICAL AND METHODOLOGICAL
PRESUPPOSITIONS

Plekhanov describes himself as a *dialectic and monistic Materialist*. He believes that there can be but two types of philosophy: the idealistic and materialistic. He says: "All those philosophers in whose view the prime factor is matter belong to the camp of materialists; but all those who consider this factor spirit, are idealists."¹ Epistemologically he holds to Engel's naive, pragmatic realism expressed in the old prosaic epigram: "The proof of the pudding is the eating thereof." The criterion of truth is not subjective but social. It "lies not in me, but in the relations existing outside of me,"² says Plekhanov. Hence "*true*" are the opinions which correctly represent these relations; "*wrong*" are those opinions which misrepresent them. "True" is that theory of natural science which correctly grasps the mutual relations of the phenomena of nature; "*true*" is that historical description which correctly depicts the social relations of the epoch under description."³ Our author reviews the history of materialism in the eighteenth century and places the blame for its failure to maintain itself in the face of the revival of German idealism upon its conclusion that man is the product of environment, and that the changes of environment are the product of man. In this manner they were entrapped in the same vicious circle from which the older schools of philosophers in vain tried to escape. This perplexity was solved by Hegel's great contribution of the dialectic method, which, when freed from its idealistic accretions, enriched the older materialism and made of it the philosophy of the new age. Plekhanov, who

¹ Cf. *On the Question of the Development of a Monistic*, etc., p. 3.

² *Ibid.*, p. 178.

³ *Idem*. Italics are Plekhanov's.

anticipates the accusation of Hegelianism, defends the great teacher and ranks his contribution, as it appears in Marx, with that of Copernicus, of Darwin, and of the other immortals.¹ Dialectics is the principle of all life. "Every motion is a dialectical process and a living contradiction; and since in the interpretation of every phenomenon of nature in the last instance it becomes necessary to appeal to motion, so we must agree with Hegel who said, that *dialectics is the soul of scientific knowledge.*"² The most important aspect of the dialectic process is that it affirms "the transition of quantity into quality."³ If everything moves, everything changes, "*every phenomenon sooner or later is inevitably transformed into its own opposite by the activity of those very forces which condition its existence.*"⁴ Thus, if every phenomenon negates itself, no institution can be of absolute or of permanent value; everything is good in its place and in its time, that is to say, relatively good. "Dialectical thinking excludes every Utopia, and, in fact, any formula of progress with a set goal. Social forms do constantly change, by reason of "the higher development of their content."⁵ Thus does Plekhanov express his mysteries of Hegel, who furnished the key to unlock the mysteries of the universe and to rid humanity of every utopian view of society.

The idealistic dialecticians, however, failed to exploit their new method properly, and by identifying the dialectic process with logical thinking they returned to the old view which explained everything by human nature, "since thinking is one of the aspects of human nature."⁶

Plekhanov explains that the earlier idealists remained in

¹ Cf. *ibid.*, p. 176.

² *Ibid.*, p. 62. Italics are Plekhanov's.

³ *Ibid.*, p. 75.

⁴ *Ibid.*, p. 64. Italics are Plekhanov's.

⁵ *Idem.*

⁶ *Ibid.*, p. 98.

the dark as to the true nature of social relations. It remained therefore for the young Hegelians Feuerbach and the Bauer Brothers, and especially for Marx and Engels to emancipate dialectics from its subjective idealism and to apply it to an objective materialism,¹ which viewed human nature and social relations as an ever-changing product of the historic process entirely independent of any individual's ideals or wishes.²

Plekhanov is in philosophy and method an Hegelian who, following Marx, inverted Hegel's idealism into materialism. To Hegel objective history was but the reflection of the absolute which he arrived at from subjective process. To the dialectic materialist the real is but the objective world and process, of which the subjective is but the reflex. "For us," says Plekhanov, "the absolute idea is but the abstraction of motion, by which is called forth all coördination and condition of matter."³ Upon this philosophy and by means of the dialectic method Marx and Engels developed their history of social evolution which Plekhanov attempts to defend and to develop as a sociological theory.⁴

3. PLEKHANOV'S THEORY OF HISTORY OR OF SOCIAL EVOLUTION

Plekhanov attempts to be the Russian *alter ego* of Marx.

¹ "At the basis of our dialectics lies the materialistic conception of nature. . . . It would fall were this the fate of materialism. And inversely: without dialectics . . . a materialistic theory of knowledge is impossible." Plekhanov in his introduction to his Russian translation of Engel's *Feuerbach*, 1st ed., Geneva, 1895, p. xxv.

² Cf. *ibid.*, p. 108.

³ Introduction to Engel's *Feuerbach*, p. xxvi.

⁴ Plekhanov believes that dialectics are inevitable to sociology. He says: "In order to understand the important rôle of dialectics in *Sociology*, it is enough to remember in what way *Socialism* out of an *utopia* was transformed into a *science*." *Ibid.*, p. xxviii.

He aims to interpret Marx so as to suppress the popular subjectivist school of Russian sociology. Marx's theory of social evolution he expresses as follows: "In order to exist, man must support his organism, which support he obtains by utilizing natural environment. This dependence presupposes a certain reaction of man upon nature, but while reacting upon natural environment man's nature also changes."¹ Our author differentiates environment into geographic environment or the conditions of place, and into historic environment or the conditions of time. "Geographic environment acts upon a given people, but it does so through the medium of social relations, which take either one or another form as they hasten or retard the growth of productive forces in possession of that given people."² Man is differentiated from the animal because his ancestors learned the use of tools. Implements of labor are equal to new organs and react upon the anatomical structure of the tool-using individual. "Quantitative differences are passing into qualitative differences."³ History takes a new trend of development. It is the era of the perfecting of his artificial organs, of the growth of productive forces. As the perfecting of the tool begins to play a determining part in man's existence, "social life itself begins to change in accordance with the development of the productive forces."⁴ The tools of production are analogous not so much to new organs of the individual man as to those of the social man. Therefore every definite change in the manner of production is inevitably followed by a change

¹ *On the Question of the Development of a Monistic*, etc., p. 108.

² *History of Russian Social Thought*, Petrograd, 1914, vol. i, p. 1.

³ *On the Question of the Development of a Monistic*, etc., p. 109. Cf. also p. 147.

⁴ *Ibid.*, p. 110.

in social structure. The role of geographic environment is all-important in this transitional period. Says Plekhanov:

It was because of peculiar characteristics of geographic environment, that our anthropomorphic ancestors rose to those heights of mental development which were necessary for their transition into tool-making animals. And, again, only some peculiarities of that same environment could give favorable opportunity for the use and for the continuous perfecting of this new achievement—the making of tools.¹

The ability to make tools is constant with man, but the application of this ability in practice is continually changing. "At any given time the criterion of this ability is conditioned by the criterion of the already attained development of productive forces."² Thus the further development of any given people at any given time depends upon the degree of development to which it has already attained. For example, the slave system of the Greek Republics made a practical use of Archimedes' inventions impossible.³ Plekhanov does not deny to intellect the power of invention, but he believes that the economic background alone can explain why intellect acts in some one certain manner and not differently.

Every ideal and social institution — whether it be the family, the state, property, or law,—every institution changes with any alteration in the process of production.⁴ Changes are at first quantitative and finally become qualitative. Qualitative changes present in themselves revolution-

¹ *On the Question of the Development of a Monistic, etc.*, p. 114.

² *Ibid.*, p. 115.

³ *Cf. ibid.*, p. 118.

⁴ In defending this theory, Plekhanov attempts to prove his case by anthropological data. All changes in social institutions, the beginnings of art, even the play of children, are to him but the reflex of economic conditions. *Cf. A Critique of Our Critics*, last two chapters, especially pp. 383 *et seq.*

ary phenomena, i. e. the change is not gradual, but one which has come by leaps and bounds after relatively long periods of apparent quiet.¹

According to Plekhanov these changes though often masquerading as ethical and religious movements, have an economic cause. "The *psychology* of society adapts itself to its *economy*. Upon a given *economic basis* there inevitably develops a corresponding *ideological superstructure*."² This Plekhanov maintains is a monistic process: economics and psychology are but two aspects of one and the same thing. He says:

Every new step in the development of the productive energies, forces a people in their every day life into new relationships which do not correspond to the passing form of production. These new and never heretofore existing relations reflect themselves in the psychology of the people, and change it. But in what direction? Some members of society defend the old order, these are the static people. Others, to many of whom the old order is not profitable, want the new. Their psychology changes in the direction of those *relations of production which in time will be substituted for the old economic order*. . . . Once this revolution is accomplished a complete correlation of the psychology of society with that of economics is established. On the soil of the new economy flourishes the new psychology, and for a time the relation remains undisturbed; it even continues to perfect itself. But little by little new differences show themselves: the psychology of the progressive class again outlives the old relations of production. Not ceasing to adapt itself to the economic background, it, however, again begins to adapt itself to the new scheme of production, which is the seed of the economics of the future.³

¹ Cf. *On the Question of the Development of a Monistic*, etc., p. 147.

² *Ibid.*, p. 152. Italics are Plekhanov's.

³ *Ibid.*, pp. 152-153. Italics are Plekhanov's.

The simplicity of this psychology is offset and complicated by the historical environment of every social aggregate. The historical environment of any one group is never entirely like that of other groups. This heterogeneity of historical environment, plus the economic differences existing within the group, intensifies the class struggle which expresses itself through political and industrial organizations. The class struggle he regards as the realistic expression of abstract, dialectical materialism. Historically, it shows itself first in the disintegration of primitive communism, leading to inequality and to the rise of classes with different and often with conflicting interests. These classes are in and among themselves engaged in a continuous, hidden or open, struggle which reflects itself in their ideologies.¹ Summarizing Plekhanov's theory of social evolution² we see that, like all other animals, our pre-human ancestors were in the beginning in complete subjection to nature. Their development was brought about unconsciously through adaptation to environment and by means of natural selection. During this period we find no signs of self-consciousness and therefore no freedom; it is the reign of physical necessity. Somehow man began to differentiate from the rest of the animal world into a tool-making animal. Tools are artificial organs directed towards the subjection of environment to man's own interest. So gradually nature is more or less subdued to the conscious will of man. The degree of the development of the productive forces conditions the extent of man's control over nature. These productive forces, in turn, are conditioned by the characteristics of geographic environment. In other words, nature furnishes man with the means for its own subjection. Man's struggle with nature is therefore

¹*Cf. ibid.*, p. 166.

² *Cf. ibid.*, pp. 192, and 197-200.

a social one. The degree and nature of man's sociability is conditioned by the extent of the development of the productive forces which also condition the development of the structure of society. Geographic environment determines the rise of productive forces; hence it is antecedent to the development of the social structure. Once, however, certain social relations have come into being, their further development proceeds according to their own inner laws, the energy of which may hasten or retard the development of productive forces which, in their turn, condition the historical development of mankind. Geographic environment acts now upon man through the medium of historic environment and greatly changes his direct relation to nature; which varies at every stage of the development of the productive forces. The development of social environment according to its own laws, does not mean that the nature of such development depends upon the will and consciousness of the people. Whereas in the first stages of social evolution geographic environment dominated man, he is ruled now by a new slavery created by himself while utilizing his physical environment. This new slavery is *economic necessity*, which increases directly with the growth of the productive forces, and is accompanied by an ever-increasing complexity of social relations. This new social process tends completely to escape social control, the producer appearing to be the slave of his own product.¹ The logic of development of the productive and social relations leads man to realize the causes of his economic enslavement. Once conscious that the cause of his enslavement by his own product is brought about by the anarchy of production, the producer organizes his product, and in this manner subjects it to his own will. Here then ends the kingdom of necessity; freedom is sovereign,

¹ Plekhanov illustrates this by the "anarchy" of capitalistic production.

liberty itself has become a necessity. The prologue of human history has been played, the individual has been set free and history proper begins. Thus the dialectic process shows how man shall come into his own. His future is bright, and furnishes no excuse for the pessimism towards which many disappointed idealists drift.

These in brief, are Plekhanov's conclusions. His theory, by reason of its abstractness, may be a satisfactory hypothesis for a philosopher of history, but it does not satisfy a modern sociologist who is more interested in the proximate causes or antecedents of social phenomena than in their ultimate, all-determining causes. Plekhanov's criticism of the subjectivist school is little more than a criticism of philosophical presuppositions and is not directed against its sociological superstructure, much of which was arrived at by an inductive study of actually existing social facts. Plekhanov's dialectic-monistic materialism, founded upon the Hegelian philosophy, is an *a priori* metaphysical presupposition and may be charged with dogmatism. The monistic attitude towards the universe is not dictated by experience of reality; it is, rather, that emotionalism which characterized the mystic philosophy of Heraclites.

Plekhanov's charges of dualism and eclecticism, therefore, do not disturb the positivist sociologist who deals with facts and not with *a priori* presuppositions. Plekhanov ignores nearly everything accomplished by sociology from the days of Comte, and limits his criticism to the sociological thinking that preceded the rise of positivist sociology. So he over-emphasizes dialectics at the expense of the many achievements of science in biology and psychology.

Plekhanov, however, has been of real service to the Russian social-political movement. His consistent application of the dialectical logic has saved him from the confusion and despair into which other factions in the Russian

revolution have been thrown, but we cannot credit him with having contributed anything of lasting value to sociology.

II. Lvov's Marxist Sociology

Few of Plekhanov's pupils and followers have contributed anything of importance. Lvov's attempt to formulate a law of social evolution on Marxist lines may be mentioned.¹ Lvov thinks Marx the Darwin of sociology. As Darwin discovered the law of the origin and evolution of species, so Marx discovered the fact which interprets the origin of the various species of society.² This fact is the *collective labor of mankind*. Lvov discriminates it from the "division of labor" which is incoördinate and one-sided. He says: "Collective labor presupposes the combination of forces as well as their division."³ So at the basis of social life lies the fact of coöperation, which moves towards measurement and apportionment of the proceeds of labor and therefore yields a formulation of the concept of value. The laws of political economy are therefore basic. Upon them rest the quantitative phenomena of society which alone can make sociology an exact science. This quantitative element, according to Lvov, can be introduced solely in two ways: by means of the anthropologic-statistical methods and by means of a concept of value. And although the anthropologic-statistical method can be applied to other than economic phenomena they all depend upon economic need and therefore must be regarded as its superstructure and must be studied as such by sociology.⁴

These conclusions are like those of Plekhanov; the criticism applied to Plekhanov's monism is applicable to the dependent theories of Lvov.⁵

¹ In a book, *The Social Law*, Petrograd, 1899.

² Cf. *ibid.*, p. 153.

³ *Ibid.*, p. 140.

⁴ Cf. *ibid.*, pp. 155-157.

⁵ Cf. *supra*, p. 218.

CHAPTER II

THE NEO-MARXISTS STRUVE AND TUGAN-BARONOVSKY

I. *The Theories of Peter Struve*

THE widespread popularity of Marxism in Russia in the nineties waned rapidly during the first decade of the new century. The heresy in the orthodox school was caused by the revisionist movement among the German social democrats, and was also an outcome of the failure of the Russian Revolution.

Peter Struve, whose life and work are closely associated with the Marxian movement and the Russian Revolution, may be called the "Father" of the Neo-Marxists and Revisionists of Russia. His writings fall into three periods: the Orthodox Marxist period, that of the transition from Marxism to Revisionism, and that in which he rejects Marxian dialectic materialism and returns to idealism and sociological subjectivism.¹

A brief analysis of Struve's sociological criticism of the Marxian social philosophy follows:

Like Plekhanov, Struve is opposed to the populist and subjectivist sociologists who desire a special economic non-

¹ These three stages of development of Struve's ideas are most easily distinguished in the following writings: (1) "Critical Notes on the Questions of the Economic Development of Russia," Petrograd, 1894. (2) "Die Marxsche Theorie der Socialen Entwicklung," in *Archiv für Sozialgesetzgebung und Statistik*, 14 Band, Berlin, 1899. (3) "Ideas and Politics in Contemporary Russia," Moscow, 1906, and "The Intelligence and Revolution," in *Vekhy*, Moscow, 1908, and other works.

capitalistic evolution of Russian society and who think the individual the important factor in progress.¹ Struve depends largely upon Simmel and Riehl's sociological and psychological generalizations, which he attempts to utilize in support of the Marxian sociological presuppositions.

Struve believes that the exceptional individual may be disregarded as a factor in social evolution inasmuch as he is but the product of the social group. "The individual," he says, "is but a form-expression whose content is ascertained by investigating the social group."² The group is the sum of the various interactions among individuals which are expressed objectively in custom, laws, character, morality and religious conceptions.³ The struggle between groups or classes is the inception of social evolution and the starting point for the sociologist.⁴ Apart from his group the individual is nil, and so his ideas, apart from group facts, are of no importance as factors in social evolution. Struve says: "The idealists who moon over the preservation of the past are, in a sociological sense, a negligible quantity."⁵ Discarding the individual, and ideas, as factors, the way is prepared for the Marxian social philosophy.

Struve also rejects the notion that the state has any creative power; he sees in it but an organization for purposes of order, controlled by the ruling classes and limiting its activities to promoting their interests.⁶ These interests are principally economic; social classes express economic distinctions within a given social environment, and therefore the social progress of Russia does not depend upon the exceptional

¹ *Vide supra*, p. 212 *et seq.*

² *Critical Notes on the Question of the Economic Development of Russia*, 1st ed., p. 40.

³ *Cf. ibid.*, p. 31.

⁴ *Cf. ibid.*, p. 33.

⁵ *Ibid.*, p. 71.

⁶ *Cf. ibid.*, p. 72.

individual or upon the maintenance of the peasant commune. It depends upon the increase and a more equal distribution of economic surplus, obtainable only through the medium of capitalistic production. He says: "Capitalism . . . socializes not only the product but also the producer. It turns man into a truly social being through binding up his individual existence by a thousand threads with the whole of the social organism."¹

Production on the large scale, requiring, as it does, many consumers, prepares the way for social reform, and organizes the masses by teaching them consciously to relate themselves to the conditions of their existence. Then the psychosocial results of economic progress become, in their turn, new factors in the whole stream of economic and social progress. Capitalism, from the subjective ethical point of view, may appear a dread institution, with purposes of exploitation, but viewed objectively it would seem to be an important means of increasing the productive forces of society. "Hence," concludes Struve, "capitalism is not merely an evil but is also a powerful agent of cultural progress; it is not merely a destructive factor but is also a creative force."²

This in brief is Struve's Marxian sociological creed, some years later discarded as untenable.

The introduction of Revisionist doctrines, characterized the second period of Struve's writings. His reaction to Neo-Marxian ideas may be found in his "Die Marxsche Theorie der Sozialen Entwicklung."³ In this essay Struve sums up the Marxian theories of social evolution. These

¹ *Critical Notes on the Question of the Economic Development of Russia*, 1st ed., p. 106.

² *Ibid.*, p. 287.

³ In *Archiv für Soziale Gesetzgebung und Statistik*, 14 Band, Berlin, 1899. This article called forth a heated controversy among the Russian Marxists whom Plekhanov answered at length in his *Critique of Our Critics*.

are: (1) The theory of socialization and concentration of production, and the theory of anarchy of production in capitalistic society. (2) The theory of increasing misery, and the theory of expropriation of small capitalists through the great capitalists. (3) The theory of a socialistic mission through an ever-increasing proletariat created by capitalistic development. The proletariat, although kept in squalor, attains at the same time a social and political solidarity which enables it to overthrow the capitalistic system and to establish in its place the socialistic regime.¹ Struve observes that Marx based these theories upon conditions existing during the forties of the last century; that the tendencies of capitalistic production then existing have since changed, and that at present, for example, there are no signs of any increase in the anarchy of production nor of any increase in the misery of the proletariat. In fact, none of the fundamental Marxian doctrines, as enumerated above, is borne out by actual conditions in the present state of society. Therefore Marxism has become a socialistic Utopia, and a pseudo science, having for its premises not facts but the Hegelian dialectical logic.

Struve criticizes the dialectical logic of Hegel and Marx. His conclusion is that social evolution proceeds not by cataclysmical leaps of antagonistic opposites but rather by a gradual compromise and reform. Accordingly, the Marxian doctrine of revolutionary progress cannot be maintained in the face of historical facts.² The transition of quantity

¹ Cf. p. 600. More detailed criticism of Marxian ideas has since been offered by Edward Bernstein, *Evolutionary Socialism*, London, 1909, and especially by Vladimir Simkhovitch, *Marxism versus Socialism*, New York, 1913.

² "Soziale siege werden viel häufiger durch schrittweise Abschwächung der Widerstände als durch revolutionäre Aufhebung potenziierter Gegensätze errungen." *Archiv für soziale Gesetzgebung*, etc., vol. 14, 1899, p. 674.

into quality, which is the principle of dialectical progress, Struve rejects. The process by logical categories breaks down when epistemologically analyzed. He undertakes the analysis, with the aid of Schuppe and Kane.¹ Struve concludes that dialectics must not be taken for the principle of evolution; that it is nothing but a method of logic tending towards an ontology.² Therefore social evolution and dialectics have nothing in common; they merely confuse real issues with abstract far-fetched mental concepts.

Thus step by step Struve abandoned the Marxian position. From a revolutionist he changed into a reformer. The experience of the Russian revolution strengthened his new theoretic convictions, and at present he is again recasting his theory of society in order to harmonize it with his political and social practices.³ His more recent writings reveal him as an idealist, almost a mystic. He belongs to the subjectivist school of sociology.⁴ Emphasizing the importance of the individual in social evolution he agrees with Tolstoi that the political perfecting of society depends upon the education of the individual.⁵ He goes so far as to place the blame for the failure of the Russian Revolution upon the

¹ We regret that space does not permit our reproducing Struve's interesting analysis. A spirited reply was made by Plekhanov in his *Critique of Our Critics*.

² "Die 'Dialektik' ist eine auf einem bestimmten metaphysischen Prinzip—nämlich auf der Identität von Denken und Sein—auf-gebaute logische Methode. Die 'Dialektik' macht somit die Logik zur Ontologie." *Archiv für soziale Gesetzgebung*, etc., vol. 14, 1899, p. 687.

³ Since the Russian Revolution (1906), Struve, like many other Marxists, abandoned the socialist party for the Liberal-Constitutional-Democratic or "Cadet" party.

⁴ By this we do not mean that Struve upholds the old populist hope of a non-capitalistic evolution of Russia. This doctrine is generally abandoned by all the neo-populists.

⁵ Cf. P. Struve, *Ideas and Politics in Contemporary Russia*, Moscow, 1906, p. 10.

"intellectuals'" lack of faith in God, and he exhorts the leaders of Russian society to adopt higher ideals and to improve their morals.¹ Here we see the once leading Marxist turning toward liberalism and mysticism.

II. *The Theories of Tugan-Baranovsky*

Among the objectivist Neo-Marxian sociologists Tugan-Baranovsky² appears to be the most scholarly and the most superior to partisan passions. He realizes the vagueness and the onesidedness of the Marxian system of social evolution and attempts to improve upon it. He professes to adhere to the materialistic conception of history and accepts as his psychological presupposition the voluntaristic psychology. He says: "The will to live directs the development of consciousness and not the contrary,—not that consciousness directs the will to live."³ The practical interests of life determine what outer stimuli the organism shall respond to. "Therefore, from the biological point of view, consciousness is nothing else than the regulator of the movements of the organism. It is directed, in its turn, by the will to live."⁴ He believes that this voluntaristic psychology which was in vogue in the nineteenth century, was adopted by Marx in his interpretation of social evolution. Marx, however, subjected all interests in life to one, that is, to the all-determining economic interest, responsible for the class struggle and for consequent changes in the structure and

¹ Cf. P. Struve, "The Intelligence and Revolution," in *Vekhy*, Moscow, 1908.

² Tugan-Baranovsky, one of the younger professors of Political Economy at Petrograd, is the author of a number of works on Economic Theory and History. His principal sociological work is *The Theoretical Basis of Marxism*, Petrograd, 1905. German Edition, Dunker and Humblat, Leipzig, 1905.

³ *The Theoretical Basis of Marxism*, 1st ed., p. 26.

⁴ *Idem*.

function of society. Tugan-Baranovsky analyses the materialistic conception of history under three heads: (1) Man's needs or interests, as the dynamic force of social evolution, (2) Economics and the social life, and (3) The social classes and the class struggle. This order will be followed in the brief analyses of his views herewith given:

I. *Man's Needs or Interests as the Dynamic Forces of
Social Evolution*

According to Marx, all human interests are economic. Production is the one great dynamic force of social evolution. Anything aiding in the process of production is a productive force. This, observes Tugan-Baranovsky, is too indiscriminate. He says: "What in this sense would not be a productive force? Religion, morals, science, the state, law, and many other things undoubtedly have a considerable influence upon social production and hence would have to be recognized as productive forces."¹ This vagueness of the concept of productive forces endangers the integrity of the whole materialistic interpretation of history. He therefore decides to analyse all existing categories of human interest and to estimate their relative importance. He says: "Since society is composed of separate individuals each of whom strives to satisfy his needs, therefore social life and activity can have no other purpose than the satisfaction of the different needs of the separate individuals composing society."²

These needs Tugan-Baranovsky resolves into five principal groups:

- (1) physiological needs for the immediate support of life and of the sense of pleasure;
- (2) sexual needs;

¹ *The Theoretical Basis of Marxism*, 1st ed., p. 2.

² *Ibid.*, p. 28.

- (3) sympathetic instincts and needs;
- (4) ego-altruistic needs;
- (5) needs not founded upon practical interests.

(1) Needs of the first group are the psychological basis of the individual's life and are common to man and animals. As the satisfaction of needs for the preservation of life produces a sense of pleasure, it stimulates increased consumption. Pleasure, however, is not always necessary for self-preservation. On the contrary, pleasure in excess actually harms the organism. The production of the necessities of life, although prior to the development of such institutions as politics, religion, etc., is strongly influenced by them. For example, clothing was at first used not so much for the preservation of life as for decorative purposes. The possession of clothing had great influence also in gaining control in politics and religion. Tugan-Baranovsky thinks that such an important economic institution as the domestication of animals had its origin in the love of play with animals and in the pleasure of their companionship. Thus other motives besides those of material necessities had their influence in economic development.¹

Only a people freed from overwhelming fear of starvation can take part in the development of civilization. A certain degree of productive labor is a necessary pre-condition of civilization, and a determining factor of social life. When, however, there is no ultimate danger of starvation, interests awaken in man which influence economic production.²

(2) Next to hunger the sexual needs command the greatest attention. But Tugan-Baranovsky does not account sexual love an important social factor. He says: "It is a mistake to see in love a social factor equal to 'hunger.'"³

¹ Cf. *ibid.*, pp. 30-31.

² Cf. *ibid.*, p. 32.

³ *Ibid.*, p. 35.

He thinks that the various forms of the family are determined by economic conditions. Thus, for example, the matriarchal family is attributable to the working of the land by the woman while the men roam abroad as hunters or as shepherds.

The criticism may here be offered that Tugan-Baranovsky, if substantially right in his criticism of Morgan's theory of the family, overlooks the important rôle that sexual differences have played in determining the economic activities of the sexes, and therefore also the resulting family organization. The fact that the woman as mother was compelled to live a relatively settled life made the working of the soil by her near the campfire to be expected. And Tugan-Baranovsky fails to mention the metronymic family, which was common in primitive society and greatly differed from the matriarchal family if, indeed, the latter ever existed.

(3) Tugan-Baranovsky holds that sympathetic feelings in human nature are as old as the race. Their source lies in parental love and in filial love, especially in the mother. Care of the infant develops altruistic feelings. The question arises whether these should be regarded as an important social force. This question is answered in the negative because "sympathetic feelings are only strong in relatively small groups of people."¹

Those persons who belong to the same social class, as a general rule, sympathize with one another more than do those belonging to different classes. In this manner there arises a class feeling which enters into close relationship with egotistic and ego-altruistic feelings; and such class feeling then appears as one of the most powerful dynamic factors in history.

(4) The ego-altruistic feelings, the psychology of which

¹ *The Theoretical Basis of Marxism*, 1st ed., p. 38.

was made clear by Spencer, underly all class feeling. The sense of solidarity is a complex feeling composed of various elements with a predominance of the egotistic and the ego-altruistic. It may be observed among social classes and it also dominates national feelings. The ambition for power and honor, with the sense of self-preservation and the thirst for pleasure, are the principal motives of human behavior. "The struggle for power," says Tugan-Baranovsky, "has in the history of mankind the same importance as the struggle for existence."¹ Political and social history would look entirely different had ego-altruistic feelings not existed among men.

(5) Practical interests although powerful in the life of man do not exhaust its content. He attaches importance to non-practical interests. The most general and simple of these he says is play, which to him is a pleasurable discharge of surplus energy and is as common among animals as among men.² Our author believes that art had its origin in play, but that science, on the contrary, was at first the product of necessity, for the maintenance of life, and that only after having transformed practical life did it become an end in itself. Religion, he thinks the highest among human interests. Unlike other Marxists he sees in religion more than a means for practical selfish ends; there are many religious natures to whom religion is an end in itself, with the Deity as the highest good. He concludes that "Religion always was, and remains up to the present time, one of the most powerful of historical forces."³

We see that Tugan-Baranovsky deviates from the Marxist view in recognizing other human interests along with the economic interests as important social forces in a continuous interaction within the social group.

¹ *The Theoretical Basis of Marxism*, 1st ed., p. 42.

² Cf. *ibid.*, p. 43.

³ *Ibid.*, p. 50.

His theory of interests reminds one of the sociology of Ratzenhoffer, Labriola, and Small. It is possible that he received suggestions from them, although his classification of interests differs from theirs.

II. *Economics and the Social Life*

Man as a social being lives in a twofold environment, one spiritual, one material. The spiritual environment is produced by the social interaction of man upon man, but the association is possible only through the medium of a material environment. So the spiritual and the material are inseparable. Economy is simultaneously a material and a social process. Man changes his material environment; this is the material aspect of economics. But at the same time man changes himself and other persons; this is the social aspect of economics. Reasoning in this manner Tugan-Baranovsky looks upon the production and exchange of goods as belonging primarily to the material aspect of economy, while the distribution of goods presents essentially social aspects.¹

He asks whether the complexity and the kaleidoscopic variation of psychic motives make a materialistic conception of history impossible? His answer is that the materialistic system, after some reconstruction, may again become a useful tool of scientific investigation.²

The fallacy of Marxian historical materialism, he believes, lies primarily in a wrong conception of economics, which by the Marxists is interpreted to include everything pertaining to the preservation of life, including food, clothing, and shelter. Tugan-Baranovsky defines economics as "The coördination of human activity directed upon the outer world,—having for its end the creation of a material

¹ Cf. *ibid.*, pp. 9 and 10.

² Cf. *ibid.*, p. 53.

environment necessary for the satisfaction of human needs.”¹ Economic activity is always a means and never an end in itself; it is always directed upon the material, outer environment, conditioning our existence. The economic struggle is with most people not a struggle for existence merely, but is rather for achievement, for power, for pleasure. Each phase of human interest, however, even the religious, has its economic aspects; for example, whole villages in Russia live by the painting of sacred images. Whatever province of social activity is under observation, we perceive that it is correlated with an economic activity. This, then, gives economics its central position in life. Says Tugan-Baranovsky:

Lines of social activity, of the most varied kind, emerge like radii from the economic center. And the center is the only point of contact of all radii, touching each other only at the center. Thus, also, social economy is the only common ground, and it binds together all branches of social activity. Everything that happens at the center is reflected in all the radii. Therefore, any considerable change in social economy calls for corresponding changes along all lines of social labor.²

Himself commenting upon this illustration, he warns his readers not to make the mistake of considering social life as concomitant with economics, “for only at its starting point is the radius covered by the central ground; after that it radiates further and further away from it.”³ The continuous deviation of social activity from the economic base and a shifting of the center of gravity from the lower physiological needs to the higher spiritual interests, are the essence of social progress. As humanity advances so the social importance of the economic aspect correspondingly

¹ *The Theoretical Basis of Marxism*, 1st ed., p. 54.

² *Ibid.*, pp. 58-59.

³ *Idem.*

diminishes.¹ In this process the individual is gradually becoming emancipated from the control of environment, and although society will always remain in a degree bound by economic determinism, yet increasingly it directs social evolution in an artificial, teleological process. This view, as is well known, is held by Lester Ward, while a gradual emancipation from the direct control of man's economic needs is also emphasized by Simon Patten. In this aspect of his theory of society Tugan-Baranovsky appears much more closely related to certain American sociologists than to Marx.

III. *Social Classes and the Class Struggle*

Monistic Marxism views the class struggle as a constant factor in the evolution of productive forces. Our author wants to determine whether there is an organic unity of these forces of social evolution, and whether the class struggle is of determining importance in history.

Like the concept "productive forces," the concept "class" has been vaguely formulated by Marx. Tugan-Baranovsky thinks that Marx looked upon class phenomena through Hegelian spectacles, observing two phases of the development of social classes. At first the rising class appears as a class only when viewed in relation to other classes, and not as a class in itself (*für sich*). In the second phase of development it becomes a class in itself; this is its stage of maturity.² Satisfied that the principal differentiating factor in the formation of classes is an economic one, Tugan-Baranovsky defines a social class "as a social group, the members of which find themselves in a like economic position towards an appropriation by one group of the surplus labor of another group, and who therefore have common economic interests and common antagonists."³

¹ Cf. *ibid.*, pp. 60 and 68.

² Cf. *ibid.*, p. 16.

³ *Ibid.*, p. 17.

If social classes were to be discriminated only upon an economic basis the intellectual class would not be a class in itself, because professional people in reality serve both the rich and the poor; therefore the intellectuals are a special group without any definite class characteristics.¹ In the light of this definition history in one of its aspects may be regarded as Marx views it, as a class struggle. Still history can not mean this only, since actual revolutionary struggles are relatively rare phenomena. However, when they do occur they are of determining importance. "In this sense," Tugan-Baranovsky concludes, "history is the history of class struggle, namely: the history of the gradual development of classes, of the appearance of class consciousness which leads to class struggle and social revolution."²

With this general formulation of the importance of class struggle, our author makes a closer analysis of the motives that result in class struggle.

Tugan-Baranovsky disputed the Marxian theory that physical need is the all-determining impulse toward economic, social and political activity. Self-preservation is supplemented by other motives; more people strive for wealth as a road to power, than for power as a road to wealth. More wars are waged for glory or power than for wealth. Therefore even wars should not be thought of as merely a form of class struggle. There are two forms of group struggle (1) the struggle of classes within a political unit, a struggle predominantly economic although the lust for power is also present; and (2) the struggle among political or national units, which is to a great extent provoked by the desire for power and glory. The economic and the political powers, however, are intricately related and mutually dependent.³

¹ *The Theoretical Basis of Marxism*, p. 20.

² *Ibid.*, p. 22.

³ Cf. *ibid.*, pp. 76 and 77.

To interpret the higher realms of human interest, including science, philosophy, art, morals and religion, the theory of class interests is evidently inadequate. "Class interests," says Tugan-Baranovsky, "are not a criterion of goodness, of truth or of beauty. Human history is something infinitely higher than a mere struggle by social groups for the means of life."¹ Thus Tugan-Baranovsky rejects the attempts of Feuerbach, and Marx and Engels to reduce ethics, art and religion to a utilitarian level. If that could be done the class struggle could not be viewed as determining, nor as coördinate with the economic basis of history, which is related² to every social activity. He believes that those Marxists who try to reduce the higher realm to a utilitarian economic level, in order to preserve the monistic integrity of their system, are proceeding from false premises and will find themselves contradicted by the real facts of history. Social groups struggle not only for the means of life, but also for power; and even this struggle does not exhaust the content of history, since it does not cover the higher realms of human activity. Class struggle is limited to the realms of economic interests. Furthermore, since the economic interest is not the only human interest, the antagonism of the economic classes does not lead to antagonism within the whole social life. "Therefore," concludes our author, "the doctrine of the class struggle is a false application of generalizations true within a partial sphere of phenomena, but not true of the whole province of human history."³

Tugan-Baranovsky's analysis of the Marxian sociology, and the formulation of his own theories, do away with the

¹ *The Theoretical Basis of Marxism*, p. 82.

² Cf. *infra*, p. 231.

³ *Ibid.*, p. 87.

materialistic monism for which the Russian Marxists, especially Plekhanov, fought so valiantly yet so hopelessly. Although Tugan-Baranovsky calls himself a materialistic objectivist, his conclusions differ little from the generalizations of the subjectivist school. They all concede an economic determinism in the earlier stages of social evolution, and only when an economic surplus is in store see society progressing teleologically, under the direction of exceptional individuals.

Tugan-Baranovsky does not discuss the rôle of the individual, and therefore we do not know his attitude towards one important doctrine of the subjectivists, but in his other generalizations he differs from them but little.

CHAPTER III

RUSSIAN ANARCHIST AND REVOLUTIONIST SOCIOLOGY

(THE THEORIES OF KROPOTKIN AND CHERNOV)

I. Kropotkin's Anarchical Sociology

Akin to the subjective sociology are the sociological theories of the Russian "philosophical anarchists". The earliest of the Russian anarchist theorizers was Bakunin, who, although not without influence upon the development of the more recent anarchist writers, was chiefly important as one of the precursors of the subjectivist sociology, and his views were therefore discussed in the setting of his time.

Related to Bakunin's principles of anarchy are the theories of Russia's most scholarly anarchist, Kropotkin.¹

A trained scientific man, he seeks to give to anarchism a scientific basis and an established sociological bearing. Philosophically Kropotkin is a positivist and an empiri-

¹Prince Peter Alexseyevitch Kropotkin (1842—¹⁹²¹) is well known through his autobiographical sketches, "The Memoirs of a Revolutionist." Although educated as an aristocrat and at one time an officer in the Russian army, in 1872 he joined the Revolutionists. He was arrested in 1874 and escaped in 1876; since when he has lived in Western Europe. He is known as scientist, historian and agitator. His sociological theories are found in his "Mutual Aid", "Conquest of Bread," and in numerous pamphlets and magazine articles.

Kropotkin, although for many years resident in Western Europe, still stands in close and vital relation to Russian thought and ideals. He reflects some of the ideas of Lavrov, Chernishevsky, and Mikhailovsky and agrees in general with the populists as to the possibility of a Russian peasant commune of the future.

cist. To him "natural law" is nothing more than a certain relation among phenomena which we dimly see, and each "law" takes a temporary character of causality. "This," he explains, "is to say: if such a phenomenon is produced under such conditions, such another phenomenon will follow. No law is placed outside phenomena: each phenomenon governs that which follows it . . . not law."¹

A social phenomenon demands no other conception of law than any other phenomenon, therefore the methods of social science are the same as the methods of natural science.

Anarchism, which our author defines as "the no-government system of socialism",² he believes is to come about as a result of the trend of all social evolution. All history is but a continuous struggle "between the coöperating standardized group and the self-asserting group of individuals."³

This evolutionary struggle is at times slow and calm, but at other times violent. "Revolution is only an es-

¹ *Anarchism: its Philosophy and Ideal*, San Francisco Free Society Library no. 8, 1898, p. 6.

² *Anarchist Communism: its basis and principles*, third ed. London, 1897, p. 1. Elaborating this definition he says: "In common with all socialists the anarchists hold that the private ownership of land, capital and machinery has had its time; that it is condemned to disappear; and that all requisites for production must and will become the common property of society and be managed in common by the producers of wealth. And in common with the most advanced representatives of political radicalism, they maintain that the ideal of the political organization of society is a condition of things where the functions of government are reduced to a minimum and where the individual recovers his full liberty of initiative and action for satisfying by means of free groups and federations . . . freely constituted . . . all the infinitely varied needs of the human being."

³ *Mutual Aid*, p. 295. Cf. also *The State: Its Historic Role*, London, 1898, p. 42.

sential part of evolution : in nature no evolution is accomplished without revolutions. Periods of very slow changes are succeeded by periods of violent changes. Revolutions are as necessary for evolution as are the slow changes which prepare them and succeed them.”¹

Kropotkin views everything as being in a state of moving equilibrium. Harmony, however, is usually but a temporary adjustment, established among all forces acting upon a given spot.

Let but one of those forces be hampered in its action for some time, and harmony disappears. Force will accumulate its effect ; it must come to light, it must exercise its action, and if other forces hinder its manifestation it will not be annihilated by that, but will end by upsetting the present adjustment, by destroying harmony, in order to find a new form of equilibrium.²

Accordingly, the revolutions of history are to be viewed in the light of necessary adaptations ; anarchistic society is approaching, and must break down the obstacles to its realization.

Kropotkin regards society as “a grand total, organized to produce the greatest possible result of well-being with the smallest expenditure of human strength.”³

It is “an aggregation of organisms trying to find out the best ways of combining the wants of the individual with those of coöperation for the welfare of the species.”⁴

Society is not an artificial product ; it is older than

¹ *Revolutionary Studies*, London, 1892, p. 9.

² *Anarchism : its Philosophy and Ideal*, p. 6. Cf. *Les temps nouveaux*, Paris, 1894, p. 12-13.

³ *Revolutionary Studies*, p. 24.

⁴ *Anarchist Communism: its Basis and Principles*, p. 4.

the human species, and our author takes great pains to trace its origin to its earliest sources, and he also attempts to determine what are the dynamic forces that have created it, and that are bidding it advance towards the ideal of anarchism.

According to Kropotkin all social aggregates, whether animal or human, are held together by the *sense of sympathetic oneness of each individual with each and with all*. Man is appealed to and is guided in his acts, not merely by love, which is always personal, or at best tribal, but by the *perception of his oneness with each human being*.¹

This sense of oneness or solidarity may be at the stage of instinct, as among animals; or it may have become the sense of justice which ultimately brings the human being to regard the rights of every other individual as equal to his own. Each individual is a unit who is independent, it is true, but who can survive and progress better by federating himself with other units and by practicing mutual aid. Our author sees traces of this principle throughout the whole universe. He says: "With the astronomer we perceive that solar systems are the work of infinitely small bodies; that the power which was supposed to govern the system is itself but the result of the collisions among those infinitely tiny clusters of matter; that the harmony of stellar systems is harmony only because it is an adaptation, a resultant of all these numberless movements uniting, completing, equilibrating, one another."²

The principle of federation, already perceptible in the inorganic world, is in a greater degree apparent in life. Science to-day takes for its unit not the species but the individual.

¹ *Mutual Aid*, p. 300. Italics are mine. Cf. also p. xiii, xiv.

² *Anarchism: its Philosophy and Ideal*, p. 4.

A species will be what the individuals are, each undergoing numberless influences from the surroundings in which they live, and to which they correspond each in his own way; and when the physiologist speaks now of the life of a plant or of an animal he sees rather an agglomeration, a colony of millions of separate individuals, than a personality one and indivisible . . . The individual is quite a world of federations, a whole universe in himself.¹

Even each microscopic cell is "a world of autonomous organisms, each of which lives its own life, looks for its well-being for itself and attains it by grouping and associating itself with others."²

In such manner man is nothing but a resultant, an always changeable one, of all his divers faculties, of all his autonomous tendencies, of brain cells and nerve centers. All are related so closely to one another that each reacts on all of the others, but each leads its own life without being subordinated to a central organ—the soul.³

Thus, first the sense of oneness or of solidarity of the individual with his species, and secondly a federated co-operation through mutual aid rather than individual conflicts, have been, in Kropotkin's view, chief factors in creating society. If it were not for this association "the most advanced being upon earth would still be one of those tiny specks swimming in the water, and scarcely perceptible under a microscope. Or would even these exist? For are not the earliest aggregations of cellules themselves an instance of association in the struggle?"⁴

In "Mutual Aid", Kropotkin adduces many illustra-

¹ *Anarchism: Its Philosophy and Ideal*, p. 5.

² *Idem*.

³ *Cf. ibid.*, pp. 5-6.

⁴ Kropotkin, *Anarchist Morality*, San Francisco Free Society Library No. 4, 1898, p. 12.

tions of the principle, viewed as the causal factor of evolution; and he concludes that in animal and in human society only those who have practiced mutual aid have survived, and are prepared for further progress, while inner struggles within the species are concomitant with retrogressive development. The periods when institutions have been based on mutual aid have made the greatest progress in arts, industry, and science.¹

Mutual aid tends towards communism. Communistic organization cannot be the product of a minority, nor can it be imposed from above. "It must be the work of all, a natural growth, a product of the constructive genius of the great mass."²

Communism must be free from centralized control. "It cannot exist without creating a continuing contract among all, for the thousands and thousands of common transactions; it cannot exist without creating local life, independent in the smallest units."³ Communism is therefore most favorable for individual development and freedom. Communistic individualism is not a war of each against all, it is an opportunity for a "full expansion of man's faculties, the superior development of whatever is original in him, the greatest fruitfulness of intelligence, feeling and will."⁴

Kropotkin believes that in social evolution the communistic tendency is present; and that in every civili-

¹ *Mutual Aid*, p. 296. It may be noticed here that Kropotkin does not disregard struggle as a factor in evolution, but he emphasizes the group struggle. Besides he thinks that Darwinism has been over-emphasized and by his theory of "mutual aid" he wishes to add an important factor overlooked by Darwinian evolutionists. Cf. his introduction to *Mutual Aid*.

² *Anarchism: its Philosophy and Ideal*, p. 20.

³ *Idem*.

⁴ *Idem*.

zation social disintegration and decay have followed the centralized state.

The communistic tendency of social evolution expresses itself in two ways.

First, there is a tendency towards integrating labor for the production of all riches in common, so as finally to render it impossible to discriminate the part of the common product attributable to the single individual.¹ All wealth is a social product of many generations; "nearly every new machine is a synthesis, a result of thousands of partial inventions."²

Secondly, there is "a tendency towards the fullest freedom of the individual in the prosecution of all aims, beneficial both to himself and to society at large."³

The ideal of the anarchist is therefore but "a mere summing up of what he considers to be the next plan of evolution."⁴

Kropotkin studies history to trace the development of tendencies and to determine in what form of organization the communistic ideal has been established.

The first form of social organization was tribal, and the communal ties were *kinship and the worship of common ancestors*.⁵

The savage identifies his interests with those of his tribe. He is no individualist. His law is the custom of the group to which he adheres, and is to him a matter of habit and usage. "Without social feeling and usages, life in common would have been absolutely impossible."⁶

¹ *Anarchist Communism: its basis and principles*, p. 4.

² *Ibid.*, p. 15.

³ *Ibid.*, p. 4.

⁴ *Idem*.

⁵ Cf. *The State: Its Historic Role*, p. 8. Also *Mutual Aid*, ch. iii.

⁶ "Law and Authority," *San Francisco Free Society Library*, no. 1, 1898, p. 8.

Kropotkin believes that only customary law should be tolerated by society. All modern law he condemns as being "born of violence and superstition, and established in the interests of consumer, priest and rich exploiter; it must be utterly destroyed on the day when the people shall desire to break its chains."¹

Tribal ties were broken and peoples were disaggregated when climatic changes drove them to migration and into conflict. At this time the paternal family sprang up, with the kidnapping of women from neighboring tribes or taking them as spoils of war. The kinship ties, once broken, were succeeded by a new common principle, namely, the *communal possession of land*. "The possession in common of a certain territory, of certain valleys, plains or mountains, became the basis of a new agreement. Ancient gods had lost all meaning; and the local gods of a valley, river or forest, gave the religious consecration to the new agglomeration, substituting themselves for the gods of the tribe."²

The village commune conducted its social affairs by its own customs, which become law: "the plenary council of all chiefs of families—men and women — was judge, the only judge in civil and criminal societies."³

All other social needs were met by voluntary societies, as fraternities or guilds.

The free city, known in ancient civilization and developed at its best during the middle ages, takes its origin in a combination of the village community with the numerous fraternities and guilds that were constituted outside territorial unions. "It was a federation of these

¹ "Law and Authority." *op. cit.*, p. 12.

² *The State: its Historic Role*, p. 8.

³ *Ibid.*, p. 9. Cf. *Mutual Aid*, ch. iv.

two kinds of unions, developed under the protection of the fortified enclosure and the turrets of the city.”¹

“In these cities,—under the shelter of their liberties acquired through the impulse of free agreement and free initiative,—a whole new civilization grew up and attained to such expansion, that the like has not since been seen.”²

Kropotkin is convinced that federation, the free commune and a free city are the culminating forms of social organization, and that the policy of centralization pursued by the state is a dangerous menace and a sure sign of decay.

The Greek clan, with a large initiative which was left to the individual and the group by means of the federal principle, gave to mankind the two greatest periods of history—the ancient Greek city and the Mediaeval city periods; while the ruin of the above institutions during the State periods of history, which followed, corresponded in both cases to a rapid decay.³

In the communal institutions of the ancient and the mediaeval periods there was struggle for the attainment and the maintenance of the liberty of the individual, for the principle of federation, for the right to unite and to act. Mutual aid gave them the victory. And when these federal institutions did collapse, it was because of their failure to widen the area of their mutual aid and of federation. Kropotkin enumerates three specific reasons for the decay of the mediaeval free city: (1) the burgers held in subjection the “inhabitants” i. e., the strangers and new comers and also the peasant; (2) they turned to trading at the expense of tilling the soil, thus creating

¹ *The State: its Historic Role*, p. 14.

² *Ibid.*, p. 18.

³ *Mutual Aid*, p. 297.

a plutocracy in their community; and (3) they adopted the hierarchical teaching of Rome, the one power.¹

These conditions gave an opportunity for the development of the modern state. Against it Kropotkin is bitter. He sees in it nothing but "an institution developed in the history of human societies to hinder union among men, to obstruct the development of local initiative, to crush existing liberties and to prevent their restoration."²

The state cannot tolerate customary law; it demands personal and direct submission, it requires equality ni servitude, "it cannot allow the state within the state."³

Egypt, Assyria, Persia, Palestine, Greece, Rome started to their destruction when they adopted the institution of the political state.

On the ruins of the Roman empire, tribes,—Celtic, Germanic, Slavonian and Scandinavian,—began civilization anew. Slowly the primitive tribe elaborated its institutions and reached the village commune. It remained at that stage until the twelfth century. Then there arose the republican cities which produced the glorious expansion of the human mind, attested by the monuments of architecture, by the noble development of the arts, by the discoveries that laid the basis for the natural sciences. But then came the state . . . Will it again produce death?—of course it will, unless we reconstitute society on a libertarian and anti-state basis.⁴

Kropotkin believes that to construct society upon an anti-state basis it is necessary to have "solidarity and equality of all."⁵

¹ Cf. *ibid.*, p. 215-221.

² *The State: its Historic Role*, p. 39.

³ *Ibid.*, p. 32.

⁴ *Ibid.*, p. 42.

⁵ *Revolutionary Studies*, p. 22.

This can be attained by the activity of an enlightened minority, who by education and by directing revolutions can free humanity from its bondage, and can permit it to continue its natural development.

Initiative, free individual initiative, and the possibility of each making use of that force at the time of a popular uprising, that is what has always made the irresistible power of revolutions. If revolutions have accomplished something in the past, that is entirely due to men and women of initiative, *to the obscure persons springing out of the crowd not fearing to assume, face to face with their brethren and the future, the responsibility of acts considered madly rash by the timid.*¹

Since the masses follow the precedents of the past it is difficult to discover the men of initiative in everyday life. "But they arise in numbers in revolutionary times and it is they, in reality, who do the enduring work of revolutions."²

This, in brief outline, is the sociological foundation of Kropotkin's system of anarchy. It contains doubtless many ingenious and true ideas. He credits Adam Smith with suggesting to him the principle of mutual aid and the consciousness of sympathetic solidarity, which gave rise to society, and which he believes were its greatest dynamic forces throughout the process of social evolution.³

It seems strange, however, that Kropotkin, who is a careful scientist,⁴ and who arrives at the conclusion that

¹ *Revolutionary Studies*, p. 28. Italics are Kropotkin's.

² *Idem.*

³ Kropotkin says that he received these suggestions when reading Adam Smith's "Theory of the Moral Sentiments." He says, "Adam Smith's only failure was that he did not understand that this same feeling of sympathy, in its habitual stage, exists amongst animals as well as amongst men." Kropotkin, *Anarchist Morality*, p. 11.

⁴ Cf. for example his inductive study of "Fields, Factories, and Work-

human progress is real and that it consists in social solidarity with complete freedom of individual initiative,¹ should be so impatient with our present civilization and so bitter against it. If humanity is progressing at all, it is progressing slowly, and in spite of the anarchist's impatience it will continue to progress only slowly. Kropotkin places himself in a dilemma when he asserts that the state is the rule of an arbitrary minority,² while affirming also that "revolutions are made by minorities."³

If this be true, as no doubt it is, it means nothing more than that heretofore, almost every society has been ruled by a powerful minority. In tribal communism, in the free city, and in modern political democracies—everywhere—society exhibits the feudal relation of the "benefit" and the "commendation." This has recently been made clear by Professor Giddings, in his theory of "protocracy," in which he traces the psychological origin of the state. He says: "A more vigorous and complex common reaction, and a livelier consciousness of kind manifested by some individuals than by others, make the dynamic men a ruling group, which converts society into the state."⁴

Every dynamic person attracts others who serve him

shops," new, revised, and enlarged edition, New York, 1913, where he arrives at the conclusion that we are entering upon a period of industrial and agricultural decentralization.

¹ "The greatest intensity of life is to be found in the greatest socialness, in the most complete identification of oneself with others . . . never at any epoch, historical or geological, have individual interests been in opposition to those of society. From all time they have remained identical, and those who have best understood this have always enjoyed the completest life." Kropotkin, *Anarchist Morality*, p. 23.

² Cf. *The Stage*, p. 22.

³ *Revolutionary Studies*, p. 5.

⁴ Franklin H. Giddings, *Sociology Outline*, 1914, p. 4.

for the protection and benefits which he grants them. This is the psychology of the feudal relationship existing in every stratum of society and of the state. Revolutions will always be a failure if they are expected to introduce the millennium. At its best a revolution only makes room for another minority, but one less arbitrary and less exploiting, whose conduct is better usually only because of fear of being thrown over by a succeeding revolution or by a popular election.

In the last analysis the realization of a pure democracy, such as Kropotkin calls for, is an ethical problem. It presupposes the willingness of the naturally stronger to yield his power voluntarily for the benefit of the naturally weaker. This our author feels but he does not clearly realize. If he did, he would not proclaim force as the means of attaining complete democracy, or ideal anarchy, as he prefers to call it. As long as men react differently in feeling, thinking and action there will be leaders and followers, and governors and governed.

Kropotkin's idea of non-centralized federated society is not so remote from reality as our author may himself believe it to be. The United States of America, the Swiss Federal Republic, and other states, are exemplifying it to a degree that proves its actual practicability. The suggestion in "Mutual Aid" that the more we coöperate the more rapidly shall we approach the goal of democratic perfection is of great importance. On the other hand, Kropotkin's scientifically unfounded radicalism is but another example illustrative of the sad conditions arising from the struggle of Russian democracy with its arbitrary autocracy. It is these conditions that have made Russian sociology peculiarly "Russian" and Kropotkin's sociology is no exception.

II. Chernov's Revolutionary Sociology

Midway between the Marxist sociologists and the Communist anarchists we must place the Russian Social Revolutionists. Chernov¹ attempts to work out the philosophical and sociological bearings of the social revolutionist movement. He starts from the Russian subjectivists, Lavrov and Mikhalovsky, and attempts to synthesize them with the Marxist economic ideas. In its epistemological aspect he utilizes the empirical criticism of Avenarius, of Mach, and especially of Riehl, whereas his sociological theories are strongly influenced by Simmel and Ward. He aims to develop an active, dynamic sociology which he calls "the scientific equivalent of practical revolutionary socialism."²

I. Chernov's Philosophical and Methodological Presuppositions

The Marxian dialectics could not avail for Chernov's revolutionary socialism of direct action. He therefore seeks not only to explode the "Marxian Myth, but also to state the concepts of a synthetic social revolutionary philosophy of life uniting a theoretical realism with an existing, active practical idealism."³

Materialism and idealism he believes are being fused, "as in the organic life of man is found the mechanical action of the brain with the conscious work of thought and feeling."⁴

¹Victor Mikhailovitch Chernov (1873—) is one of the principal organizers of the more recent revolutionary movements. He has been jailed many times, and has spent three years in exile. Famous as propagandist and editor, he has contributed appreciably to the theoretical and sociological studies of revolutionary theories. Cf. *supra*, pt. I, Ch. i.

³*Philosophical and Sociological Etudes*, Moscow, 1907, p. 379.

⁴*Ibid*, p. 3.

²*Ibid*, p. 296.

Chernov attempts to disprove the old fallacy of "cause" and "effect" as independent agents. Experience knows nothing but antecedents and sequences. We know "no relation of an active agent to a passive reaction, but simply a relation of a fact to the whole."¹

The "functional" view, so successfully developed in the study of mechanics, biology and psychology, should be utilized also in sociology.²

Social phenomena being too complex, induction is not adequate, therefore deduction may legitimately be employed.

Chernov, starting with Lavrov and Mikhalovsky, adopts and develops their theory of the "Subjective Method" in sociology. He asserts that a sociological investigation as compared with one in the realm of natural science, has this peculiar feature, that it requires "adding to the objectively constructed combinations, further constructions out of materials from the inner, subjective, psychological world."³

Without this addition he believes it impossible to understand sociological phenomena. In the science of man and human society, where the investigating subject makes himself also the object of the investigation, both subjective and objective psychological phenomena must be recognized and harmoniously united. The method for the study of this combination of objective and subjective phenomena he calls the "subjective method."⁴

With this subjectivism in mind Chernov differentiates the problems of sociology. The first problem is the investigation of values and their re-evaluation for the purpose of deriving a formula of progress. To be

¹ *Philosophical and Sociological Études*, p. 302.

² *Cf. ibid.*, pp. 307-309.

³ *Idem.*

⁴ *Idem.*

strictly scientific, the formula "must be founded primarily upon the psychology of interest."¹

It will furnish also "a theory of normal, healthy, harmonious satisfaction of interests."²

Such is the subjective-psychological aspect of sociology as distinguished from arbitrary subjectivism.

Chernov lays down three rules which, when applied in harmony with all other requirements of logic and scientific methodology, "will raise the inevitable human subjectivism to a scientifically regulated means of thinking, that is, to a subjective (or subjective teleological) method of thinking."³

Chernov's three rules are as follows: "(1) Utilize elements which constitute the inner subjective world of the investigator in order to construe out of them,—on the basis of similarities to subjective phenomena or of differences from them,—the subjective psychological world of other persons. (2) Construct rationally an ideal of normal social life, which shall present the highest unity of all active tendencies and interests of the human mind; the concrete content of the ideal being conditioned by scientific knowledge of the relation between the subjective requirements of man and the objective means of satisfaction. (3) Utilize this ideal as a criterion for (a) the classification of social phenomena according to the degree of their importance, and (b) the evaluation of phenomena and their division into progressive or regressive, normal or pathological, healthy or ailing. The ideal appears here as the formula of progress."⁴

To Chernov the second great problem of sociology is the study of social forms,—economic, judicial and polit-

¹ *Philosophical and Sociological Études*, Moscow, 1907, p. 214.

² *Idem*.

³ *Ibid.*, p. 239.

⁴ *Ibid.*, p. 238.

ical institutions and forms, and of their relation to the healthy normal development of the individual.¹

Chernov does no more than outline these problems of sociology. He proceeds next to make a critical analysis of men's various views upon the social process, and finally he presents his own view.

II. Chernov's Theory of the Social Process

Chernov thinks it a futile task to search for a *primum agens* of social changes. The historical process is not the result of any one force. He asserts that sociologists who have attempted to reduce the social process to the influence of economics, or of law or ideologies have failed, and have been guilty of forging statements or presentations to fit the theory. Such were the Comtian and Hegelian schools which postulated the intellectualistic view. Marx, Engels and their following swung the pendulum the other way, rejecting ideologies and attempting to explain all historical changes by means of man's material and economic interests. Reaction to a one-sided monism brought in the eclectic attempts of more recent sociologists who have wished to establish a synthetic theory of the interaction of social factors. Yet, after all, the "interaction" is but a convenient formula, pretending to solve everything, while in fact giving no exact, clear, or determinate view of the nature or the mechanism of social development.²

To such vagueness our author prefers an honest confession of "we do not know."³

There are no separate intellectual, economic, or judicial processes. There are only social processes, which have those aspects. They may be discriminated, separated for

¹ Cf. *ibid.*, p. 214.

² *Ibid.*, p. 275.

³ *Idem.*

purposes of abstraction, but in fact they are inextricably interrelated. So every economic relation embraces both law and physical relations. "When our attention is directed upon the formal aspect of human relations, we have before us a coördination of forms of law, or judicial structure; but when it is directed upon the objective realistic aspect we have production, exchange and distribution of material products, in a word, the material culture of society. Finally, there is the inner, subjective aspect, which gives us status of education, mental association, literature, and the moral norm; in brief, the social ideology, or psychology. In this manner, from three different points of view, there are opened up to us three aspects of social development,—the formal or normal, the objective-realistic or material, and the subjective or psychological."¹

This view of the social process Chernov likes to call the "historical monistic," or "the realistic conception of history."²

This historic monism is not one-sided; "it is an all-sided, synthetic monism."³

Economics, law, and ideologies cannot be the "cause" of the historic process, since they are themselves the products of it. Therefore the principles whereby the historic process may ultimately be interpreted, can be found only in elements that precede history."⁴

The prehistoric elements are natural environment and man; the natural environment as the objective factor and man as a unique biological type that developed peculiar characteristics through the struggle for existence

¹ *Philosophical and Sociological Études*, Moscow, 1907, p. 279; cf. also pp. 368-369.

² Cf. *ibid.*, p. 278 and 371.

³ *Ibid.*, p. 371.

⁴ *Ibid.*, p. 368.

in prehistoric times. These are the origins from which the sociologist and the historian must start. "In the interaction of natural environment with the quantitative and qualitative growth of man may be found the origin of the social process."¹

Man, then, is not a passive element exposed to the actions of nature.

Man is not at all a *tabula rasa*, upon which outer objective conditions and forces may freely write anything that they may desire. Man is also a complete power of nature, presenting in himself one of the highest complex combinations of the elementary forces of nature; like every other force he possesses his own definite inner laws of self-activity, and he manifests a definite coördination of active tendencies.²

So Chernov sees in man himself the major dynamic force of history. Interacting with natural environment, he creates an artificial environment or culture, so-called. In this secondary environment various cultural types are formed. Differences depend, on the one hand, upon the concrete differences of natural environment, and on the other hand, upon the different racial peculiarities of people or tribe. Institutions and ideologies, in their turn, are "equally productive."³

These various social forces are produced by man under the direct or indirect influences of natural environment. They should not be placed one over against the other. None of them is an ultimate cause of the other. They are each and all but aspects of the same social process, presenting in themselves the content of the realistic conception of history.

Such in brief is Chernov's dynamic and monistic theory

¹ *Philosophical and Sociological Etudes*, Moscow, 1907.

² *Ibid.*, p. 364.

³ *Ibid.*, p. 368.

of society. It is "functional psychology" applied to social life. Feelings and the will appear in this process as the dynamic forces, and the intellect as the directive force.

With all the other Russian subjectivists Chernov strives to defend the strong individual and, at the same time, to protect social solidarity from disintegration. He realizes that the relation of these two elements in society can be made satisfactory only through a proper conception of ethics. We cannot discuss exhaustively the ethical aspect of Chernov's monism. He wishes on the one hand to get away from the utilitarian point of view, and, on the other hand, to do away with the "categorical imperative" of abstract Kantian metaphysics. Like Lavrov he attempts to arrive at a social and realistic imperative as a guide to the individual in his relation to society. He says :

An ideal can and must be the supreme criterion of all human values. Only its commands can in the rôle of the supreme imperative withstand the voice of separate instincts, affections and interests, because it is the highest unit of all ; everything else in relation to it is of a lower order and has no right to existence as an independent entity, self-sufficient, and equal. And this is why man who has developed up to the critical scientifically-disciplined mind can evaluate social phenomena only from the view point of an ideal.¹

To determine the highest ideal is the task of sociology. The ideal must be one to satisfy all the normal instincts and interests of man.

While Chernov at the task of determining the ideal, does not wholly divest his work of old utilitarian maxims, his effort to establish ethics upon a sociological basis is

¹ *Philosophical and Sociological Études*, Moscow, 1907, p. 213.

commendable, and is in harmony with the general modern trend of the science of morals.

In evaluating Chernov's sociological work we find that it shows an advance over that of the older subjectivists. Its theories have a sounder philosophical (epistemological) basis and they are brought into line with modern functional psychology. But Chernov's sociological theories are scarcely more than general outlines, and it would be well were they more fully developed. Slight as are his services to sociology at large, Chernov's efforts to give the Russian revolutionary socialists a positive dynamic sociology have been more successful. He guarantees success to the efforts of enterprising individuals, by freeing his sociology from dialectical materialism, which denies the importance of the individual in the social process. Chernov's sociology, however, has the qualities of the earlier subjectivists. Although closely related to the thinking of many foreign sociologists it is first and foremost "Russian Sociology," and as such it has a limited value for sociology at large.

CHAPTER IV

THE JURISTIC AND THE HISTORICAL-GENETIC SCHOOLS OF RUSSIAN SOCIOLOGY

THE CONTRIBUTIONS OF KORKUNOV AND KOVALEVSKY

I. The Contributions of Korkunov and Kovalevsky

Independent of the current social-political movements which have so strongly influenced other schools of Russian sociology, stand the Juristic and the Historico-genetic schools. They began their work early in the seventies and still are yielding valuable contributions. The representatives of this branch of Russian sociology are without exception scholars from the great Russian Universities of Moscow and Petrograd. Their interest in sociology was aroused through their efforts to find a positive and scientifically sound basis for the theory of law and politics, which heretofore had taken its premises from the axioms of metaphysics.

Already Sergeyevitch,¹ in his doctor's dissertation, "*Problem of the Political Sciences*" (1871), had sought by the aid of Comte, as authority, to rid the theory of politics of dogmatic presuppositions and to establish its premises upon facts inductively obtained by sociology from a study of the forms of organized society.

This earlier attempt was further developed by Mu-

¹ Vasily Ivanovitch Sergeyevitch, Professor of Law in the Petrograd University (1872-1899). Author of many books and articles on law and politics. He was one of the first to make a study of the ancient Russian popular assembly, the *Vecha*.

romtzev¹ who, realizing the isolated position of law among the other social sciences, demanded that law should be studied in close relation to all other aspects of social life. He wanted to have the historic-comparative studies of ancient and modern institutions utilized for this purpose, and also the history of the development of the theory of law. He makes a rigorous distinction between "law" in its judicial and in its scientific sense. The former stands for a principle, which, whatever may be its origin, is by no means the same thing as a scientific relation or law. Social laws are not necessarily identical with existing moral and judicial norms. Muromtzev did not live to develop fully the sociological aspects of his theory of law, but his suggestions were taken up by others, and among these Korkunov is the most important.

Korkunov² influenced by Muromtzev, developed a theory of law based upon sociological premises. To get the true sources of law and to establish its proper functioning in society Korkunov attempted to make, with the aid of sociology, a study of the social conditions of legal development, including the nature of society, the character of law considered as the social order, the forms of social groupings, and the conception of the state. In reviewing these topics we will first analyze his concept of the *nature of society*.

Society is to Korkunov neither a mechanism nor an organism. "Doubtless," he says, "the general laws which

¹ Sergey Andreyevitch Muromtzev, Professor of Civil Law at the University of Moskow, expressed his progressive views on the theory of law in his *Outlines of a General Theory of Civil Law* (1879), and in his *Outlines of Sociology* which remained unfinished.

² Nikolas Mikhailovitch Korkunov, Professor of Law in the Petrograd University since 1879. He is the author of many works. His *General Theory of Law* and the *Social Meaning of Law* are the most important.

govern the organic and the inorganic world apply equally to the phenomena of social life.”¹

The principal characteristic of the inorganic world is the unimportance of its past. It is determined by present conditions. The organic world, on the contrary, and also the social world, are determined by both the present and the past. Standing ever beside the present, the past always plays an important part in social affairs. Each generation has a certain influence upon the development of the social life of future generations. “Our inheritance from our fathers is of overwhelming importance.”²

Thus society, according to Korkunov, is controlled by these three elements, “1st, the present conditions under which it acts; 2nd, its past; 3rd, the ideal drawn from the past.”³

These three factors in their correlation present social phenomena, which are complex and peculiarly different from all others. Their peculiarities result principally from the moral and psychical ties which bind individuals into social groups.

Ability to produce ideals is the characteristic sign of all social phenomena, and we must conclude that it exists in direct proportion to the development of the social life. The weaker the social bonds of a people, the weaker is that people’s intellectual development and the greater its carelessness of the future.⁴

Another conclusion which Korkunov draws from his theory that power to create a social ideal is in proportion to the social life already achieved, relates to the future development of social life. Conditions favoring the de-

¹ *General Theory of Laws*, English translation by W. G. Hastings. Boston 1909, p. 289.

² *Idem.*

³ *Ibid.*, p. 290.

⁴ *Cf. ibid.*, p. 294.

velopment of the psychic life of the individual are equally favorable to the life of the aggregate. Where the development of individual thought is stifled, the growth of the social ideal becomes impossible.¹ He cites the Messianic hope of the Jews as an example of an idea that binds a people to the preservation of its national unity under historical conditions otherwise unfavorable. It is a corollary of these truths that if social relations are determined by the degree of development of the ideal formed by individuals, in actual social life conditions of existence are modifiable according to the ideal held by the society, and false notions may have a great influence upon social development.²

Since no limits can be assigned to social ideals, and since change of ideas can bring about significant changes in social life, no limit can be set to social growth.³ Viewing the nature of society as on the whole psychic, Korkunov attempts to establish the relation of society to the individual. His problem is to give an answer to the question whether there is anything like individual independence, or whether the individual is a mere subject of the general law of causation and cannot exist in opposition to society. He says: "From the point of view of modern psychology can the existence of an individual consciousness be explained in such a way as to set this consciousness over against the rest of the universe? Again, can a certain independence of the individual's part in his relations with society be established?"⁴ These psychological problems are conditioned by the significance given to ideas of causation and finality. "If we admit, just once, the existence of an objective end for

¹ Cf. *ibid.*, p. 293

² Cf. *idem.*

³ Cf. *ibid.*, p. 296.

⁴ *Ibid.*, p. 316.

which the universe was created and which has guided its progress through the ages since, everything in the world, and by consequence the individual also, is inevitably reduced to the condition of a means."¹

Korkunov holds that in proving the proposition it is impossible to go beyond oneself.

Whatever are the ends towards which the individual compels himself to strive, they exist only in him, in his consciousness. They are ends which he conceives and whose elements he finds in his own head. From this point of view, the individual is objectively neither a means nor an end. Subjectively, it may be said that he is his own end, in the sense that every end which he conceives is a product of his own consciousness, of his own intelligence.²

The individual, although conscious of himself as an end, is nevertheless not an independent being in the sense in which the mechanistic sociologists so regard him. On the other hand, he is not a subordinate part of an organism as he is viewed by the organic sociologists. The psychological theory to which Korkunov adheres does not deny that the individual to a large degree is the product of society. But "He is never a simple product of it, never the simple reflection of the principles which set in motion a given collectivity. Every individual is the product of the simultaneous influence of several societies, and in each man can be seen combinations of distinct traits from many social influences."³

As the individual never completely identifies himself with society he remains a distinct and an independent principle, tending to transform society little by little, and in this manner he contributes to the progress of social life.

¹ *General Toeory of Laws*, p. 318.

² *Ibid.*, p. 319.

³ *Ibid.*, p. 321.

"From our point of view," concludes Korkunov, "social development is the resultant of all the conscious tendencies and efforts of individuals, (the active element), which are reacted upon, also (and this is the passive element), by an order of things which is the result of a long historic evolution."¹

So the individual is not only a part of his social environment, subjecting himself to its control, but also is a dynamic force changing and directing the social life.

Having arrived at this conclusion as to the nature of society and its relation to the individual, Korkunov attempts to formulate the principles of the relation of law to the social order. The activity of the various elements of society which are in psychic unity, must have an exterior coördinating and controlling principle. "The factor which institutes and controls this coördination in society is no other than law."²

Viewing society psychologically, we cannot regard law "as simply an order imposed by society upon individuals who are only passive beings. The final basis of law is the individual consciousness. It is there that the ideas as to the means to be employed for the delimitation of conflicting interests take their origin; and consequently thence arise all ideas as to juridical norms."³

The conception of right, therefore has been a subjective idea, and only gradually has taken on the form of custom, juridical practice and, finally, of legislation (which differentiates law as an objective factor). Therefore, also, the actual course of life never coincides precisely with legal abstractions. Laws, gradually formed, are not determined merely by the subjective qualities of the in-

¹ *General Theory of Laws*, p. 322.

² *Ibid.*, p. 323.

³ *Ibid.*, p. 324.

dividual but by his environment as well. Besides making it possible for co-existing individuals to enjoy a degree of liberty, laws constitute one of the important conditions of human progress. Law protects minorities and fixes bounds for all new, striving interests, the predominance of which would quickly ruin weaker ones, and deprive society of conditions indispensable to its own development. Without law the future would be sacrificed to exigencies of the present.¹

Human groupings may be voluntary, like stock companies, and clubs, or involuntary, like the family, and especially the state. Both kinds must have a sense of solidarity holding them together. "In some societies this results from the collective life, instead of producing the collectivity, as in the family and the state, for example; while in others it is the basis and not the result of the grouping."²

Among the various forms of social organization Korkunov analyzes the state as the chief institution in the development of law. He defines the state as a "social body asserting for itself independent, recognized, coercive, governmental control over a free people."³

Korkunov attributes to the state an exclusive right of coercion, which he believes to be of great importance for the whole social life. It reduces acts of violence and so makes economy of force. The constraint of the state is not arbitrary, it is "disciplined by law. It is penetrated with ethical principles."⁴

Governmental authority does not need to be the personification of any one's will. It is a "force arising out of the citizen's consciousness of his dependence on the state."⁵

¹ Cf. *ibid.*, p. 327.

² *Ibid.*, p. 328.

³ *Ibid.*, p. 343.

⁴ *Ibid.*, p. 344.

⁵ *Ibid.*, p. 351.

The state functions through its organs, which may be unipersonal or collective in form; its organs carry out in their organization the principle of division of labor.

Korkunov's contribution does not amount to the development of an independent sociological system. He borrowed many of his ideas from sociologists like Spencer, Fouillée, Kareyev, Gumpłowicz and others. His importance to social science is that he succeeded in developing a system of law from sociological presuppositions. That the theory of law needs more positivist elements than it has possessed heretofore is conceded by many eminent jurists, who have shown appreciation of Korkunov's efforts and have given his work a wide circulation by translating it into a number of modern languages.

II. The historical-genetic sociology of Kovalevsky

The most important among the historical-genetic sociologists is Kovalevsky.¹

Already in his initial work "The Historic-comparative Method in Jurisprudence and a Manual for the Study of the History of Law" (1880)—he expresses his opinion upon the inadequacy of the philosophical approach to the study of social institutions and recommends the historical-comparative method. Influenced by Maine, Tylor, McLenan, Morgan, Spencer and others, Kovalevsky developed his studies of the genesis of institutions in what he calls "Genetic Sociology." Besides the historical aspect of sociology he also devoted himself to the study of sociological methodology and to the various

¹ Maxim Maximovitch Kovalevsky, Professor of Law at the University of Moscow (1877-1887): having been removed from this position he continued lecturing in various European universities and writing on the genesis of institutions. In 1908 he became Professor of Sociology at the Neurological Institute in Petrograd.

theories of society. We will briefly sum up his ideas of the methodological and the historical-genetic aspects of sociology.

The Methodological Aspect of Kovalevsky's Sociology

In general, Kovalevsky follows Comte in his classification of the sciences and in defining sociology as "the science of order and progress in human societies." He thinks, however, that this definition has been better worded by Professor Elwood as the science of the organization and evolution of society."¹

This definition contains the two principal aspects of sociology which Comte called "Social Statics" and "Social Dynamics." This double aspect safeguards sociology from limitation to a mere philosophy of history, which at its best embraces only the dynamic aspect of sociology.

This is true also of ethics and of psychology. When, for example, De Roberty attempts to reduce sociology to social ethics, he does not cover the whole province of sociology. Besides the moral considerations which are important for the progress of society, there are other aspects of the social process, such as the biological and the economic, which stand apart from ethics. Therefore, sociology is the only social science that can take for its business the discovery of all these causes and their interaction.²

A part of this is true also of psychology. Kovalevsky disagrees with Tarde that the field of sociology is fully covered by psychology. It is true that much in society can be explained by what Tarde calls "interpsychology," or the theory of the interaction of one mind upon another. But the inadequacy of this collective or social

¹ Kovalevsky : *Sociology*, vol., i, p. 6.

² Cf. *ibid.*, vol. i, p. 14.

psychology to interpret all of the social process brings it under sociology as a branch of the latter science.¹

So also biology. In so far as it covers the social life of animals it may be utilized by sociology to interpret the genesis of social institutions.²

The concrete social sciences, such as ethnography, statistics, political economy, politics etc., all supply sociology with material for its genetic studies, but in their turn these sciences must base their generalizations upon sociological laws, which present a synthetic whole of the process and progress of human societies.³

This is especially true of the genesis of law, of political institutions and of political economy. Sociology alone can supply the jurist with sure guiding principles for determining various stages in the evolution of law, and so emancipate jurisprudence from its traditional metaphysical premises.⁴

To sum up: "The concrete social sciences," says Kovalevsky, "although furnishing sociology with materials for its synthesis, must at the same time base their empirical generalizations upon those general laws of coexistence and development which sociology, as a science of the order and progress of human society, is called upon to establish."⁵

Kovalevsky after a careful study of the various systems of sociology⁶ arrives at the conclusion that there is no one all-determining social factor. He says: "Sociology will gain measurably, if the effort to find a first cause is eliminated from its immediate problems and if it

¹ Cf. *ibid.*, p. 26.

² Cf. *ibid.*, p. 28.

³ Cf. *ibid.*, p. 30.

⁴ Cf. *ibid.*, p. 62.

⁵ *Ibid.*, p. 30.

⁶ Cf. his work *Contemporary Sociologists*, St. Petersburg 1905, and is *Sociology*, vol. i, part ii.

limits itself in accordance with the complexity of social phenomena to showing the simultaneous and parallel action and reaction of many causes."¹

He is impatient with sociologists who show a monistic bias and who are continually seeking some all-determining factor of the social process. He says:

We deal not with factors but with facts, each of which, in one way or another, is bound up with a mass of others; is conditioned by them and in turn conditions them. To talk about a factor i. e. about a central fact, which determines after itself all others, is to me the same as to talk about those drops of the waters of a river which, by their movement, condition its current.²

Abandoning the idea of the all-determining factor, Kovalevsky recommends the historical-comparative synthetizing method as best adapted for sociological research. In this manner Kovalevsky leads up to the study of "genetic sociology" to which he devotes most of the space in his "Sociology."

*The Historical-genetic Aspect of Kovalevsky's Sociology*³

Kovalevsky finds this branch of sociology of special interest to Russians because of the extraordinarily rich ethnographic material possessed by them, which in spite of generations of research has by no means been adequately treated. He divides his material into the ethnographic—with special attention to the survivals of the metronymic family, of exogamy, of animism, etc.—

¹ *Contemporary Sociology*, p. xiv.

² *Ibid.*, p. viii.

³ Kovalevsky's "Genetic Sociology" is the substance of the second volume of his "Sociology." We reviewed this work in the *American Journal of Sociology*, vol. xix, no. 3, pp. 386-398; and reproduce here the substance of that article.

and the historical-legendary, containing a large mass of folklore. Employing the historical comparative method, he is careful not to overestimate anything, but to draw his conclusions from premises which admit of being checked up by comparison. Thus he hopes to be able to point out how all aspects of the social life are psychically related to one another and how by their interaction they result in various social institutions. His argument that it is impossible to establish a criterion of primitiveness from ethnography, since it does not put us face to face with the primitive conditions of mankind, leads him to an hypothesis of primitive man, which is formed by way of successive conclusions not only from ethnography but also from animal life. This leads to analysis of the social and family life of animals, which thereupon is considered as the starting point of the human family and the human horde or herd. In these chapters the much-debated topics of the metronymic family and sexual taboos are thoroughly discussed. The author favors the view which ascribes priority to the metronymic order. He also thinks that the most primitive sex taboo was limited to the mother, as can be also observed among anthropoid apes. The tribe has not grown from the family; it is rather a human herd which grew through the integrating influences of taboo, of exogamy, and of the elimination of blood vengeance within the group. Exogamy originated as a means of stopping the bloody feuds and quarrels for the possession of women, so protecting the tribe against annihilation. Gradually, with the transition into an agricultural state of life and the increase of property, which he thinks had its beginning in the fear of magical contagion, the regulative functions of the group differentiated into simple forms of government, which in their turn hastened the decay of tribal forms of organization. Agri-

culture and private property made slavery possible and profitable. The latter institution encourages raids and conquests, which coerce the weaker tribes to confederate or to be absorbed by their enemies. War and conquest give opportunity for leadership. The successful leader gradually rises above his tribesmen in wealth and power and is able to dictate to them and to subordinate them. This situation prepares the way for feudalism. Along with these developments of property and government, and in its psychical aspect intrinsically related to them, there goes on the development of religion. According to Kovalevsky religion has its roots in an animistic conception of nature, in fear of departed ancestors, and in dreams. Fetichism, totemism, animal and plant cults and finally the worship of the cosmic forces of nature, are the earlier forms of expression in religion. Briefly this is the gist of "Genetic Sociology."

Although the foregoing arguments are more or less familiar, they are richly illustrated by old and new ethnographic material, some of which was gathered by Kovalevsky personally in his expeditions among the barbarian and savage tribes of the Russian Empire. His interpretation of exogamy is original and finds support in a later independent research by W. M. Strong, described in an article on "The Origin of Exogamy," *Sociological Review* v, no. 4. His view of the origin of religion is a little out of date, being based on the animistic hypothesis of Tylor. This, fact however, does not diminish the value of his illustrative material, which would lend itself as well to the recent interpretations of Miss Jane Harrison (in *Themis*), or of Émile Durkheim (in *Les formes élémentaires de la vie religieuse*).

Kovalevsky, who still continues his genetic studies, has given us in his "Sociology" some valuable contribu-

tions. He is one among the few writers in Russian sociology who have pursued research apart from any partisan movement. His works, therefore, being less "Russian" are of greater value to sociology at large. The whole juristic and historical-genetical school should be recognized as one of the first groups of scholars that have sought to rid the study of law and of politics of their metaphysical premises and to establish them upon a scientifically sound sociological basis.

CHAPTER V

THE FRANCO-RUSSIAN SOCIOLOGISTS

(DE ROBERTY AND NOVICOV)

The Sociological Theories of De Roberty

MORE or less removed from the social-political problems of the Russian people are the sociological theories of Yakov Novicov and Eugene De Roberty. Having emigrated to France, they wrote in French under the influence of French thought and life. De Roberty published his first work on sociology (1881) simultaneously in Russian and in French. The book was much more favorably received on the banks of the Seine than on those of the Neva, and De Roberty remained in France until recent years when he returned to Petrograd and joined Kovalevsky as a lecturer on sociology in the newly established Psycho-Neurological Institute of Petrograd and co-operated in editing the newly established yearly series of sociological books. This re-introduction of De Roberty's sociological ideas into Russia may have some influence upon the future development of Russian sociological thought and therefore it is proper to give his theories a brief analytical survey.

De Roberty began his writing on sociology as an orthodox positivist. His first work, "Sociology" purposes only to interpret the positivist sociology, especially in its methodological aspects, including the place of sociology within the classification of the sciences, the nature of sociology, and its method.

Comte had given to the sciences an abstract classification. Each abstract science was to have its corresponding concrete science; which, however, he failed to provide for sociology. De Roberty explains that such classifications are made only for the sake of symmetry and are not required by logical necessity. Sociology "is founded upon various abstract sciences; it does not present signs of logical or subjective necessity; it proceeds entirely from an objective necessity."¹

Sociology is an abstract science and therefore fundamental, since the concrete sciences are always derived from the abstract.

Each of the Comtian sciences has its peculiar province. That of sociology embraces the laws of the social life in relation to its environment.

One would imprint upon sociology a particular absurdity if one tried to assign to it anything else but the study of the relations of "socialité" with the other "propriétés" of matter; or, to speak more plainly, if one tried to study society, after having subtracted the physical conditions of our globe and the biological conditions of its inhabitants.²

Psychology is closely related to sociology. It may be regarded as "a prolongation of sociology and is like a study which does not know how to become a constituted science until sociology shall have attained its complete development."³

De Roberty hopes to improve on Comte's method in sociology by applying to the study of social phenomena the descriptive method. "What is missing in the social sciences is a natural history of society, a description of social phenomena as analytic as possible."⁴

¹ De Roberty, *La Sociologie* ii ed., Paris 1886, p. 38.

² *Ibid.*, p. 34.

³ *Ibid.*, p. 188.

⁴ *Ibid.*, p. 5.

From his generally Comtian views De Roberty moved on to a more independent position which he calls "hyperpositivism", from which he attempts to reduce sociology to a system of social ethics.

He outlines his "hyperpositivism" in twelve points. In an abbreviated form the gist of his teaching follows. Hyperpositivism consists:

1) In a thorough separation of object from method, between two ideological species of which one precedes, engenders and fashions the other in its image;

2) In introducing, according to the empiric law of the three states, the theoretic law of correlation between the sciences and philosophy, and its correlative law of the three types—or unilateral directions—of metaphysics (materialism, sensualism, idealism);

3) In demonstrating the law of identity of contrary abstractions when raised to the n^{th} power (*la loi de l'identité des contraires surabstraits*); this is an equation in the world of ideas equivalent to the great law of the conservation of energy;

4) In reducing the transcendent to experience, the unknowable to the knowable, deity to entity;

5) In reducing finality to causality;

6) In conceiving reality as an essentially homogeneous unit, be it in the elements which necessarily transform one thing into another, or be it in the laws which govern infinite evolution;

7) In distinguishing between abstract and concrete knowledge, and basing the distinction upon a theory of knowledge which would complete the hierarchy of sciences established by Comte:

8) In formulating and defending the bio-sociological hypothesis in sociology;

9) In conceiving of psychology as a concrete science of the mind made up of biological and sociological laws ;

10) In conceiving of sociology as an abstract science in the world of superorganic facts, a science the essential phenomena of which are identical with the phenomena of the moral world as studied by ethics ;

11) In formulating and defending the important theory which gives the order of the four great factors of superorganic evolution ; these are : science, philosophy (including religion), art and work ; it also specifies the principle social values, and finally indicates the conditions which sociology (or any other science) must fulfill before passing from an empiric to a theoretic state ;

12) In formulating and defending an hypothesis which, departing from the present, is destined to serve the future abstract science of the super-organic world.

The ideas formulated in these twelve theses reappear in a modified form in De Roberty's "nouveau programme de sociologie".¹ Here he gives under three captions :

1. A fundamental hypothesis of the nature of the superorganic ;

2. A scientific method ;

3. A general law of evolution.²

In summing up De Roberty's more recent sociological ideas we observe the following ; There is an unbroken continuity of development from the organic and physiological to the super-organic, which is also the social. The psychological and the social or moral life have the same source. He says : "The same current of energy divides itself into two branches, of which one mani-

¹ Paris, 1904.

² Cf. *Nouveau programme de sociologie*, p. 6.

feats itself as physiological action and returns almost immediately to its first source, and the other, having become ideation, tends to express itself as social or ideological action.”¹

Thus superorganic or social life begins with ideation and becomes increasingly complex and is more and more bound to the ideological environment and more and more shaped by the actions of the group.²

Having deduced the super-organic life from its biological sources, De Roberty next develops his psychology from the former. Collective psychism is solidarity. Solidarity exercises a great influence upon the psychical development of the individual; it shapes the individual after itself and transforms him into a part of the group. Morality and sociality are identical. “But sociality is in some way the progressive rationalization of life, of the great organic dominion, and in this manner of the entire universe.”³

Society is a permanent and natural composition of all selves, whether present or future selves, with all others, —as they are found in a certain organic and geographic environment.⁴

Society will always remain an abstract reality, a corollary of which fact is that it is not the biological, but the social, individual who is the concrete unit of society. The individual is the end and not the beginning of the social process. He does not create the group. The group creates him. The dynamic of the social process is psychical. It consists of feelings and ambitions. Altruism is the principal cause of social activity. Also

¹ *Le psychisme sociale*, p. 107-108.

² *Ibid.*, p. 106.

³ *Ibid.*, p. 116.

⁴ *Cf. Constitution de l'éthique*, p. 132.

there are customs which produce many psychic phenomena; opposite to these are innovations.¹

In this progress is a necessary development; it is always a development of altruism, of sociality; it is a transition from the organic to the super-organic, a striving towards an ideal.²

Super-organic evolution arising from biological sources is realized in a relatively small number of species among which it takes two characteristic forms: with some, as, for example, in animal societies, it remains instinctive and stationary; but with others, as in human societies, it continually increases in consciousness and becomes more and more fit for adaptation and development.

The evolution of the super-organic passes through three stages: the bio-individual consciousness, the group or collective consciousness, and the social-individual consciousness. The first is a biological fact and the last is a social fact.³

The dynamics of the social realm are ideas; "Les idées mènent le monde",⁴ says De Roberty. Objectively viewed the social, or super-organic process, has four phases; "Science, philosophy, art and work are the four great stages in the scale of super-organic facts."⁵

These four are also the factors of the law of historical development which in their subjective or rational, teleological sequence are in reversed order and appear as work, art, philosophy and science.⁶

As the world is moved by ideas, material progress will

¹ Cf. *Le psychisme sociale*, p. 162 et seq.

² Cf. *Les fondements de l'éthique*, p. 153 et seq.

³ Cf. *Constitution de l'éthique*, p. 73-74.

⁴ *Ibid.*, p. 71.

⁵ *Ibid.*, p. 42.

⁶ Cf. *Nouveau programme de sociologie*, p. 188 et seq.

naturally not precede moral progress. However, both kinds of progress are closely related, only the material depends upon the spiritual.

Finality is characteristic of the social process and this necessitates for sociology the tasks of emphasizing the teleological point of view and of justifying the interpretation of the social process by the dynamic activity of ideas. This theory also harmonizes finality and causality.¹

De Roberty attempted to divorce sociology from the Darwinian principles by his hypothesis of social psychism, in which neither to biological nor to environmental facts are to be ascribed any determining influences. Exceptional men being products of the group, are likewise not to be considered as determining factors. Social progress is brought about by a non-personal psychism expressing itself through the ideas of science, philosophy, art and work which are the products of no individual in particular but which have been created by social contact and by innumerable psychic interactions. De Roberty in his effort to free himself from the extreme views advanced by biological and environmental sociology, swings the pendulum far out into the opposite direction, which is as extreme as what he wishes to avoid.

II. THE SOCIOLOGICAL THEORIES OF NOVICOV.

Novicov is even less known to his own people than is De Roberty, although in sentiment he harmonizes in many respects with his Russian colleagues, being an anti-Darwinian pacifist and federationist, traits we have observed among both Slavophiles and Westernists. As an uncompromising enemy of all forms of despotism he frequently attacks the political institutions of Russia, and this may be the principal reason why his books were but

¹ Cf. *Constitution de l'éthique*, p. 56 et seq.

little if at all circulated in his native country, since the Russian censor would naturally have to bar them out. It is however likely that as the freedom of the press increases in Russia, his French works will be translated into Russian and exert an influence upon Russian sociological thought. It may therefore be not out of place to give here a brief analysis of his sociological theories.

Novicov may be called an anti-Darwinian-pacifist and a bio-sociological theorizer. He proceeds from the presupposition that there is but one set of laws, which controls all phenomena, whether inorganic, organic or social. These universal laws are laws of conflict or struggle and of association or cooperation; they manifest themselves in various ways, according to the nature of the phenomena. In general, he defines struggle thus: "Material atoms having been grouped around a center, free themselves from it and combine with a new center."¹

Universal struggle varies greatly in its particular manifestations. The social struggle is not identical with the biological, and for this reason Novicov continually attacks Darwinism as applied to social phenomena.²

He believes that much mischief was done by failing to distinguish between biological and social struggles, and between struggles within the same class or species and struggles between classes or species. He therefore makes this classification:

"I. Struggles between individuals of differing species and struggles between individuals of the same species.

"II. Struggles between individuals capable of association and struggles between those incapable of association.

¹ *La Justice et l'expansion de la vie*, quoted from the authorized German translation of Alfred H. Fried, Berlin, 1907, p. 259.

² Cf. especially Novicov's work: *La critique du Darwinism sociale*, Paris 1910.

"III. Struggles among individuals with high intellectual characteristics and struggles among individuals with only embryonic intellectual faculties."¹

The normal social struggle manifests itself through invention, which is followed by competition with the old, and by discussion. "The natural forms of the struggle are the psychical phenomena of invention and of discussion; but the struggles among men themselves are only a fraction of those struggles which our species is forced to wage against its external enemies."²

Novicov makes a detailed analysis of the struggles among human societies,³ and among individuals in their various phases, as the physiological, economic, political and intellectual, which have for their ends respectively the attainment of nourishment, of riches, the satisfaction of selfish aims, and intellectual interests. These ends may be attained either in a slow and irrational way, through brute force, or in a quick and rational way, through justice.⁴

Although, according to Novicov, society is a direct continuation of a biological organism subject to the law of selection,⁵ yet he believes that justice can accomplish a more complete selection than force.

Justice is the social mode of the evolution of (human) species

¹ *La Justice et l'expansion de la vie*, German translation, p. 264.

² *Ibid.*, p. 352.

³ Cf. his work *Les luttes entre sociétés humaines*, Paris, 1893.

⁴ Cf. his "tableau de la lutte pour l'existence," in *Les luttes entre sociétés humaines*, p. 402, also *ibid.* p. 462.

⁵ He says: "One may say in general that the biological development which had begun with the unicellular animal and proceeded up to man, will as well continue in society"; *La Justice et l'expansion de la vie*, German translation, p. 153, and "since biological methods are perpetuated in society, one may assert *a priori* that the phenomena of positive and negative selection are found there as well". *Ibid.*, p. 150.

which biologically goes on through the survival of the fittest. Through the establishment of justice the assent of the fittest is quickly obtained and in opposition to it the destruction of the less fit is also accomplished through the triumph of justice.¹

Therefore justice becomes almost a synonym for all social achievements and virtues. He says: "Expansion of life, happiness, association, order, organization, health, safety, liberty, equality, material well being, civilization and world-wide justice, are from a certain point of view identical concepts."²

Society is an association of associations.³

Association is the second universal law which cannot be disregarded with impunity, "Through the mechanism of association every individual injures himself who injures his neighbors, in other words he puts himself into a pathological state."⁴

Therefore "every action which leads to association is normal, and every action which leads to disassociation is pathological."⁵

Wars are unjustifiable in human societies. They create conditions of disassociation or anarchy. In animal societies bloody struggles are normal, but to man are given resources to prevent those occasions which create wars among animals. "Man can multiply his resources to an almost unlimited extent through agriculture and the raising of cattle, while animals cannot do this man can limit the growth of population to suit himself, while the animal cannot do this."⁶

Knowledge is the key to a harmonious development of association and therefore to human happiness. "Love

¹ *Ibid.*, p. 158.

² *Ibid.*, p. 156.

³ Cf. *ibid.*, p. 354.

⁴ *Ibid.*, p. 281.

⁵ *Ibid.*, p. 282.

⁶ *Ibid.*, pp. 272-273.

of struggle, crimes, passions and the imperfections of our nature are not by any means the real and true hindrances to human happiness; the true and only hindrance is ignorance."¹

Novicov teaches that a widely disseminated education which would range over the whole hierarchy of Comte's classification of the sciences would insure the abolition of poverty. The improvement of man's nurture not nature is the principal problem. "Social happiness will never come as a result of the betterment of human nature."²

It has to come by improving social and political institutions. Novicov is a thoroughgoing utilitarian. He believes that "social welfare is not based upon altruism but upon egotism."³

If man can once grasp the idea that to act according to justice is most profitable for his own welfare he will do what is right, compelled by motives of sheer selfishness. This idea of the profitableness of justice our author believes will in time eliminate not only struggle between individuals but also among classes, races, nations, and and so enable man to reach the goal of social happiness which Novicov views as a worldwide federation of peoples.⁴

Novicov believes that throughout the history of social evolution such motives have been at work; that the growing consciousness of the profitableness of an association of associations and not bloody struggle, as the Darwinian sociologists assert, has created the state. Of course he cannot deny that innumerable wars have been waged in the making of states, but these have been rather pathological phenomena proceeding from man's ignorance of the true sources of happiness.

¹ *Ibid.*, p. 394.

² *Ibid.*, p. 389.

³ *Ibid.*, p. 10.

⁴ *Cf. ibid.*, p. 385 *et seq.*

Briefly outlined, then, the development of the state, according to Novicov, proceeds thus: Man having originated from an inferior animal starts forth as a nomad. In the days of horde, clan and tribe the limits of human association could not be determined by territory, but were fixed by bonds of blood relation and by individual relations. After man settled down he began to build dwellings and to till the soil. By and by divisions of labor and exchange appeared, and production increased and differentiated. Institutions of all kinds were created, and the social bond became a territorial one. The first form of territorial grouping is the city. Communications with neighboring cities make a code of laws necessary. Communities so unified become the state. Riches and leisure are obtained, and needs of the intellect arise. Art and literature flourish. With the latter begins the problem of language. A favored dialect becomes universal,—becomes a so-called national language. Step by step with social progress there is progress in other lines, in art, in science and in philosophy, and the state has reached the phase of nationality. When this has been established, the intellectual bond, together with the territorial bond, unifies men as members of the same nation. Powerful relations may thus exist between citizens of different states, provided that they belong to the same nationality. Later on, neighboring nationalities may join, and so are formed cultural groups, as in the Europe of to-day. The last phase will be attained when finally a still larger association shall have unified the whole of humanity.¹

We have briefly presented the principal points of Novicov's sociological theories. In criticising them it

¹ Cf. *ibid.*, pp. 308-319.

may be said that they present two extremes. The first is an unwarranted biological analogy crudely applied to society. For example Novicov says :

Economic production is a direct continuation of the physiological process. Some cells of certain animals produce hair which protects the animal from cold. If man through the united effort of his intelligence and his limbs makes for himself a dress or a coat which protects him against adversities of the season he simply continues the physiological process of the wool-producing cells. ¹

This kind of analogy is not only absurd but, worst of all, it explains nothing. Man wears cloth for various other reasons than simply to protect himself against the cold. To what cells of the sheep, therefore, shall we ascribe the clothing worn in the hot season?

Secondly, Novicov goes to extremes in his utilitarian ethics. He overlooks the fact that most persons, even those who have been educated in the whole hierarchy of Comte's classification of the sciences, have interests greatly diversified, and often different from those of the group in which they live. Therefore, if they conform to the ways of the group they do not feel that they are benefiting themselves, but rather that they are doing an altruistic act. Take, for example, a southern gentleman who achieved and enjoyed his culture at the expense of slavery; he may well have realized that the institution of slavery was harmful to society and therefore in the long run would be harmful to his progeny. He may have realized all this and yet, if like Washington he freed his slaves, it was a self-sacrificing act. Like cases are presented by the liquor traffic to-day and by much of the

¹ *Ibid.*, p. 150.

anti-social big business. Ultimately every anti-social deed will avenge itself upon the race. In this we agree with Novicov, but we must call to mind that most men who let themselves be guided by their self-interest live not for ultimate but rather for proximate ends. To quote a word from Novicov's illustrious kinsman Alexander Herzen: "The goal of each generation is itself." "We live not for the purpose of entertaining others; we live for ourselves."¹

And this was said by a thorough-going positivist who was well at home in the whole hierarchy of the sciences. But perhaps Herzen was a pathological case!

¹ Cf. *supra* sec. on Herzen.

CHAPTER VI

RETROSPECT AND FUTURE OF RUSSIAN SOCIOLOGY

IN estimating Russian Sociology two questions may be asked. First, what has it achieved for the Russian people in the solution of their economic, social and political problems. This question is important since, as we have learned, most of Russian sociology was written as stimulated by the needs of the time. The second question is, What contributions have Russian sociologists made which are valuable to sociology as a science?

In answering the first question we may say that the Russian theorizers have had a good deal of influence in shaping the policies of the time, although it is questionable whether they have ever arrived at any real solution of Russia's tremendous problems. The Slavophiles who controlled the reform policies which were to give independence to the Russian serfs, decided upon the maintenance of the much-idealised peasant land-commune. They desired the perpetuation of this ancient institution to bar from Russia the big capitalism with its proletarianization of the masses. In this policy the Slavophiles were supported by the populists who, however, agitated for still more radical measures. The peasant land-commune, as we have learned, was unable to bar capitalism from Russia but it retarded its development for about half a century, so giving Russia an opportunity to benefit by the experience of Western Europe.

The Subjectivist School, which is the most important one among Russian sociologists, may be credited with having exploded some of the false Slavophil notions as to the innate goodness and perfection of the common people,

and of the Russian political and ecclesiastical institutions. It also modified among the intellectual class some of the fanatical radicalism which preached the creative revolutionary ability of the common people. It recognized the necessity of social control and above all, of education, but at the same time it was aware of the danger of over-standardization and emphasized the creative function of the critically-intellectual individual. Along with this subjective matter it recognized the imperative necessity of economic surplus, and the possibility of wealth increase through applied science and the division of labor. Recognizing and evaluating all of the important aspects of society, it viewed the preservation and the complete development of individuality as the most important task, in fact as the very end of society. The representatives of the subjectivist school were leaders of the opposition, and therefore their influence in bringing about changes in affairs of state and in social reform were indirect; nevertheless, they were highly important.

The Marxist sociologists, who were converted populists, turned their attention to the city proletariat and organized it into an important political force, spurring by their rivalry the radical populists into new activity.

In general, one may conclude that with the exception of the nationalist trend, Russian sociology has been the theoretical aspect of the dynamic-progressive forces of the Russian people.

The following analytical table will give a brief résumé of Russian sociology as it has concerned itself with the economic, social and political problems of the Russian people. It embraces the whole range of Russian Sociology, with exception of the juristic and historical-genetic schools, and the contributions of the Franco-Russians. The column showing the profession of the authors and

their official positions bears out the statement that Russian sociology is not the work of professional scholars, but rather of leaders of public opinion. The columns indicating their principal problems make clear what they regarded as most important for the welfare of their people.

Have Russian sociologists contributed anything of value to sociology at large? To say that they have not, would be unfair. Much of what is in vogue among sociologists to-day has been worked at by Russian sociologists. They were among the first to try to rid sociology of Darwinism and Spencerianism and to seek to establish it upon a psychological basis. But when all this is conceded to them we must also say that most of their good ideas have remained foreign to sociologists generally, and have since been wrought out independently by West European and American sociologists in a much more systematic way than by the earlier and unknown Russians.

Of course, there are contributions made by such men as Kropotkin,¹ Kovalevsky,² Korkunov,³ and others, that have now become the common possession of Western European and American students of social science.

Also there is much ingenious sociological thought still buried in Russian periodical literature, or poorly edited in the collected works of many authors.

The principal defect in much of Russian sociology is its tractarian nature, which depreciates its value to sociology as a science.

What are the prospects of Russian sociology for the future? Reasoning on the basis of the past, one may say that it depends greatly upon the attitude which the

¹ His "mutual aid" theory.

² His studies of Russian primitive institutions.

³ Sociological theory of law.

ruling classes take towards the more progressive opposition. The present world war has established something in the nature of a truce among the various conflicting movements of thought in Russia. It offers opportunity for a future policy of peaceful compromise. Will the parties in power embrace the opportunity? If they do, a way for a normal evolution of Russia will be established and Russian sociology will probably reflect the situation. If Russian autocracy, however, continues its old policies of suppression of public opinion, sociology will also keep its revolutionary character. Russian sociology in the past was moulded by the economic, social and political problems of the time, and the tendency is not likely to cease so soon in Russia.

Not all of Russian sociology, however, has been of the propagandist kind. What, we may ask, is therefore being done by Russians to contribute to sociology as a science? Here we notice a deadlock not peculiar to the Russians alone. The philosophical and the psychological approach to sociology, and the development of systems has nearly reached the stage of the vicious circle.

The circle can be broken only by introducing new methods. Of these there are two which are now being developed. The historical-genetic is generalizing principally from ethnographic materials. This method is being used by Kovalevsky and his pupils, who have rendered valuable service, and there is still unexplored material in the Russian empire to continue the work. Another method is the inductive-statistical, and in this very little has been done in Russia, because there is but little reliable data on hand, and secondly the tedious work which the statistical method demands does not appeal to the present sort of Russian students of sociology. Therefore, we may hardly expect that much if anything will be accomplished by them along this line of work for the present.

APPENDIX I

THE TEACHING OF SOCIOLOGY IN RUSSIA

SOCIOLOGY as a university study is still in its infancy in Russia. This, however, does not mean that sociology has not been or is not studied in Russia. On the contrary, it was and is very popular within the progressive circles of the Russian intellectual class. The Russian reformers hoped to receive from sociology a key for the solution of their perplexing economic, social and political problems, and therefore diligently pursued it.

In the universities sociology was introduced first by professors of law and politics in an effort to re-construct those sciences and to establish them upon a positivist basis by the aid of sociology.¹

It was also taken up by various philosophers of history, especially by Professor Karyev, who hoped by the aid of sociology to rid the philosophy of history of its metaphysical premises.

As an independent study, however, sociology was only recently placed in the curriculum of the newly (1908) founded Psycho-neurological Institute of Petrograd with Maxim Kovalevsky and Eugene De Roberty (died 1914) in charge of the Department. This inadequate presentation of sociology in the Russian universities is principally attributable to the authorities' ignorance of the nature of this science, and to a traditional prejudice against introducing anything new into the university curriculum.

¹ Cf. *supra* pt. iii, chapter iv.

APPENDIX II.

SOCIOLOGICAL LITERATURE IN RUSSIA.

ALTHOUGH there are but few Russian university chairs from which sociology is taught, Russian scholars have created a large sociological literature. Almost all of the principal sociological works may be had in Russian, as those of Comte, Buckle, Spencer, Lilienfeld, Ward, Giddings, Gumplovitz, Durkheim, De Greef, Lacombe, Le Bon, Worms, Kidd and many others. The various works by Russian authors, we need not mention here. We have learned to know them in the pages of this book.¹

Much of the current sociological thought appears in the Russian periodical literature. There are, however, no specifically sociological periodicals as yet in Russia. In the past many articles on sociology appeared in the following monthly periodicals, which we give in their chronological order.

- Sovryemennik*, St. Petersburg, 1836-66 ;
Otechestvennyya Zapiski, St. Petersburg, 1846-84 ;
Sovryemennoye Obozrenye, St. Petersburg, 1868 ;
Znaniye, St. Petersburg, 1870-77 ;
Dyelo, St. Petersburg, 1874-87 ;
Svyet, St. Petersburg, 1877-79 ;
Mysl, St. Petersburg, 1880-82 ;
Severny Vestnik, St. Petersburg, 1885-97 ;
Russkoye Bogotstvo, St. Petersburg, 1880-1918 ;
Mir Bozhi, St. Petersburg, 1892-1906 ;
Novoye Slovo, St. Petersburg, 1894-1897 ;

Of the monthlies now in existence the *Russkaya Mysl*, Moscow and Petrograd, *The Russkiya Zapiski*, Petrograd, and

¹ Cf., Bibliography for Russian Sociology.

the *Zavyety*, Petrograd, are voicing the traditions of the subjectivist school. The *Sovremenny Mir*, Petrograd, and the *Vestnik Evropy*, Petrograd are the organs of the objectivist school. Besides these the scientific journals *Voprosy Filosofii i Psichologee*, Moscow, and the *Vyestrik Psichologee*, Petrograd, discuss sociological problems. In recent years (since 1913) Kovalevsky and De Roberty began the issue of year books on *New Ideas in Sociology* which are to be to Russia what Durkheim's annual publications are to France.

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STATE REGULATION OF RAILROADS IN THE SOUTH

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**STATE REGULATION OF RAILROADS
IN THE SOUTH**

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MAXWELL FERGUSON

TO
MY FATHER AND MOTHER

PREFACE

IN this study the author has endeavored to outline the development of state regulation of railroads in the South, with special reference to the growth and present status of regulation through the various state commissions. The chapters on Charters, Early Laws, Constitutions, and Recent General Railway Legislation are to be understood as introductory, merely, to the main body of the monograph.

That there is a need for some treatise upon the subject with which this one attempts to deal has for some time been recognized by southern scholars. But whether the publication of the pages here offered is justifiable, in view of the brief treatment, only, which the author has been able to give to this immense field, is a question concerning which he has long had the gravest doubts. He has concluded to offer the treatise in its present form, however, in the hope that students in the various colleges and universities of the South may be encouraged to take up the study of railroad regulation in each one of the southern states, aided by the brief sketches here presented, and that thus the whole field may be the sooner covered in the adequate manner to which its importance entitles it.

The reader will notice that the treatment of the subject in this study has been confined to those states, only, which lie east of the Mississippi and south of the Ohio rivers and that, accordingly, the states of Maryland, Missouri, Arkansas and Texas are not touched upon.

This is for the reason, mainly, that the author has for some time been working in the general field of railroad transportation in the South with the hope of producing within a few years a treatise upon the more recent developments in those states which are included in the Southern Freight Classification. It is proposed, in that work, to treat of such topics as the Growth of the Principal Southern Railroad Systems, Intercompany Relations, Special Rate Problems, and State and Federal Regulation. This present monograph is offered, then, as a small part of a larger work.

In his search for facts the writer has had to presume upon the courtesy of many officials and friends in various parts of the South whose generous coöperation has been of such assistance as to preclude a full acknowledgment in this place of his indebtedness. He is under special obligation, however, to Professor Charles Lee Raper, of the University of North Carolina, for the suggestion of the subject of this study, for sound criticism of the more important drafts and for continued advice and encouragement; and to Professor W. C. Mitchell, for his careful reading of the manuscript and galley proof. To Professor Edwin R. A. Seligman, especial acknowledgments are due, and are here gratefully tendered, both for his kindness in revising and preparing this study for publication, and for helpful suggestions and stimulating criticism throughout the whole of the author's graduate course. Finally, to all the remaining members of the Faculty of Political Science under whom he has studied, he wishes to extend his gratitude for the widened outlook upon human activity which they have steadily set before him.

MAXWELL FERGUSON.

NEW YORK CITY, 1916.

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CHAPTER I

CHARTERS

I. *Introductory*

THE chief objects which the southern states appear to have had in mind in connection with railway regulation were generally the following: the regulation of the tariffs of the railroads; the coöperation of the different companies in the transportation of freight and passengers; and the rendering of safe and prompt service to the public. The early charters were very loosely drawn; but as mistakes came to light in the course of time the tendency developed of putting more and more exacting restrictions upon the operation of the carriers. It will not be out of place here to attempt a rapid summary of the ends that were sought to be accomplished.

II. *Rendering of Safe and Prompt Service*

As stated in a charter granted by North Carolina in 1837, the customary rule was that the company "shall at all times furnish and keep in good repair the necessary carriages and other requisites for the safe and convenient transportation of persons and property."¹

III. *Coöperation in Transportation*

Connections and Crossings. Charters very often prescribed that the railroads were to allow each other's tracks to unite or intersect wherever reasonable and feasible, and

¹ Acts, 1837, ch. xl, sec. xxviii.

this feature became more common in later charters, as the petty state jealousies wore away.¹

Consolidation. There was very little mention of this topic in the earlier charters.² Whatever tendency there was appears to have been in favor of the authorization of consolidation.³

The Leasing and Operation of Parallel or Competing Lines. This was a power frequently conferred in the charters, roughly, antedating the Civil War. With the development of evils such as extortion this power came to be more and more explicitly denied to the companies.⁴

The Construction of Parallel Lines. Express prohibitions appear rather early in the charters of all the states in regard to such construction.⁵ It is greatly to be deplored that prohibitions of this nature were not more numerous and stringent.

IV. *The Regulation of Tariffs*

In General. The commonest provision was such as that in an early Florida charter where the right was conferred upon the company to "demand and receive such prices and sums for transportation—as may be from time to time authorized and fixed by the by-laws of said company."⁶ Very often it was provided that any excess over a certain annual rate of profit—usually from fifteen to twenty per cent—should be paid into the internal improvement fund.⁷

¹ Laws of Virginia, 1836, ch. iv, sec. xxvi.

² Meyer, *Railway Legislation in the United States*, p. 77.

³ *E. g.*, Laws of Kentucky, 1833, ch. ccvi, sec. xix.

⁴ Meyer, *op. cit.*, p. 77.

⁵ Laws of Louisiana, 1831, no. lv, sec. vi; Laws of Georgia, 1839, p. 104; *ibid.*, 1835, p. 192; Laws of Kentucky, 1833, ch. ccvi, sec. xx.

⁶ Laws of Florida, 1850-51, ch. cccxvii, sec. xiv.

⁷ *Ibid.*, ch. cccxvii, sec. xiv; *cf.* Laws of West Virginia, 1868, ch. lii, sec. vi.

In many charters there was no reference at all to the tolls or rates to be charged.¹ In some cases rates were fixed by reference to those prescribed in charters granted previously by the same state or by other states.²

Maximum Rates. Maximum rate provisions were plentiful in both the early and later charters. But in nearly every instance the maximum was placed so high as virtually to deprive those provisions of most of their importance.³

Publicity of Rates. This was a matter seldom dealt with. Wherever a provision appeared it provided, usually, for the publishing of rates in one or more newspapers within a certain period after the action of the directors, and forbade their increase during the period for which they were established.⁴

Discrimination. There are very few references in the early charters to this subject. The most notable clause occurs in a charter granted by North Carolina in 1837, wherein it is stated that the company "shall give no undue preference to the property of one person over that of another, but as far as practicable shall carry each in the order of time in which it shall be delivered or offered for transportation."⁵

V. Miscellaneous

Powers Reserved to the Legislature. This was a matter not treated at all in the majority of charters. Whatever provisions there were referred, as a rule, to the right of the legislature either to regulate the charges for transportation

¹ Laws of Georgia, 1835, p. 196.

² Meyer, *op. cit.*, p. 62.

³ *Ibid.*, pp. 58-62; Laws of Kentucky, 1833, ch. ccvi, sec. xx; Laws of Virginia, 1836, ch. cxi, sec. xlvi.

⁴ Meyer, *op. cit.*, pp. 62-63; Laws of Louisiana, 1831, no. lv, sec. ix.

⁵ Laws of North Carolina, 1837, ch. xl, sec. xxix; Laws of West Virginia, 1866, ch. cxxxi, sec. vii.

or to purchase the railroad after the lapse of a certain number of years.¹

State Participation in Construction. The charters of all the states afford numerous examples of this practise.

Limitations on the Life of Charters. Most of the charters failed to include a provision on this point. The limit, wherever one was set, was rarely beyond forty years.²

Limitations as to Taxation. In order to encourage the construction of railways it was a general practise in the South narrowly to confine the authority of the state in the matter of taxation, and even to exempt railroad property altogether from taxation for the early period of the corporation's life.³

¹ Meyer, *op. cit.*, pp. 67-68.

² *Ibid.*, pp. 69-70.

³ Meyer, *op. cit.*, pp. 70-71; Laws of Louisiana, 1831, no. lv; sec. ix; Laws of Kentucky, 1833, ch. ccvi, sec. xx; Laws of Florida, 1854-55, ch. dcx, sec. xviii.

CHAPTER II

EARLY GENERAL LAWS

THE first fundamental general laws in the eastern and north central states appeared, roughly, in the decade 1835-45, whereas in the South such laws did not make their appearance, in the main, until somewhat later.¹ Two instances are here given,—one of a statute enacted in the thirties, and the other of a law passed a few years after the conclusion of the Civil War.

The Virginia law of 1837—the first general law enacted in the South—did away, in the *first* place, with the requirement of a legislative charter for each company launched, under which previously only strong interests had been able to carry their bills through the assembly. Certain general regulations were to be deemed a part of all subsequent charters incorporating railroad companies, “to the same effect as if the same were expressly re-enacted in reference to any such charter or act, except so far as such charter or act may otherwise provide.”

It sought, in the *second* place, to safeguard the property and tolls of the railroads by a provision to the effect that any part of any charter or act of incorporation “granted agreeably to the provisions of this act” might be altered, modified, or repealed by any future legislation, *except* that no law was to be passed taking from a company its works or property without the making of just compensation, or changing its rate of compensation without its consent. And

¹ Meyer, *op. cit.*, p. 95.

to make sure that the railroads should not be interfered with too greatly in their laudable desire to enrich their stockholders, this act provided that no future law should so reduce the rate of compensation of any company chartered under the act as to prevent dividends of fifteen per cent per annum within thirty years from the time when the first dividends from profits should be declared, or as to prevent dividends of twelve per cent per annum after the expiration of those thirty years and before fifty years from the same time, or as to prevent dividends of ten per cent per annum after the said fifty years. Of course, a legislature has no right to bind future legislatures in any such manner as this, as the United States Supreme Court has often enough decided. And yet this anomalous provision was re-enacted into later codes, was never challenged by subsequent legislatures, and was only overthrown, after the lapse of seventy years, by the energetic action of the corporation commission in the memorable struggle over the two-cent maximum passenger fare prescribed by the commission in 1907 for the strongest railroads in Virginia.

A *third* and very important provision of this act had to do with the additional duties which were now laid upon the board of public works. The board was ordered to obtain from each railroad in which the commonwealth was interested as a stockholder or creditor, or which was wholly within the state, an annual report, showing the amount of capital stock, the gross receipts, and the net loss or profit for the year. As soon as a report indicated that the original cost of the road, together with six per cent interest, had been reimbursed to the stockholders, the board was to prescribe such tariffs for the road as would return to the stockholders six per cent dividends annually. A provision like this could be of little or no effect, for the reason that when a railroad earns more income than it lawfully has the

right to, it finds it very easy to dispose of the surplus over and above the legal rate of dividends in the payment of higher salaries and the like. The Virginia railroads, accordingly, so managed their finances that the board of public works never had a chance throughout its long career of eighty-six years to exercise its rate-making function.¹

A far better example is the first general railroad law of North Carolina, enacted in 1872,² and covering somewhat more than thirty pages. First, the rules for the formation of railroad companies were laid down. Any number of persons, it was provided,—not less than twenty-five (an unusually high number for the South)—might form a company for the purpose of constructing, maintaining, and operating a railroad for public use. The articles of association were to state the name of the company, the years of its corporate life, the route (in detail), the amount of the capital stock, and the names and residences of the directors (sec. i). Second, the chief powers of companies were enumerated; namely, to intersect and unite with other railroads at any point on the route; to regulate the time and the manner in which passengers and property should be transported; to fix the charges for such transportation services (with the exception that passenger fares were not to exceed a maximum rate of five cents a mile); and to borrow money for the completion and operation of the road (sec. xxix). Third, provision was made for the rendering of annual reports to the governor by all corporations formed under this act, such reports to embrace one hundred and two items and to cover, principally, the amount of capital and indebtedness, the cost of the road and equipment, its char-

¹ Acts of 1836-1837, ch. cxviii; in particular, secs. xxiii and xxvi.

² Laws, 1871-72, ch. cxxxviii.

acteristics, the transportation services of the year, the expenses of maintenance, and gross and net earnings (sec. xxxi). Fourth, the legislature reserved the right to reduce the rate of freight, fare "or other profits" in all cases except where such reduction would decrease net profits to less than ten per cent per annum on the capital actually invested (sec. xxxiii). Finally, consolidation or merger with continuing lines was permitted, while expressly forbidden in the case of parallel or competing lines (secs. lviii and lxv).

In brief, this act contained most of the principles and provisions embraced in the multitude of special charters hitherto granted. Like the general laws of other states, it may be said to have furnished the point of departure for all subsequent legislation on the subject of railways. And again, like those other laws, it barely touched upon the vital questions of extortionate charges and unjust discrimination which were soon to awaken the people to a truer conception of the relation of the railroads to the State.

CHAPTER III

CONSTITUTIONAL PROVISIONS AFFECTING RAILROADS

I. *Incorporation*

IN most of the southern states the legislature may not alter or amend the charter of an existing corporation, or pass a general or special law for its benefit except upon the condition that the corporation in question will thereafter hold its charter subject to the constitution.¹ This is to bring to terms sooner or later those corporations whose charters were granted decades ago in the period when legislators allowed charters to be very loosely drawn.

Corporations are prohibited from incorporating under special laws in Alabama, Kentucky, Louisiana, South Carolina and Virginia.²

Most of the states specifically declare that corporations may be formed under general laws only.³

In Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Virginia the right is reserved to the state to amend or revoke any charter the

¹ Ala., art. xii, sec. ccxxxi; Ga., art. iv, sec. xi; Ky., sec. cxc; La., sec. cclxii; Miss., art. vii, sec. clxxix; S. C., art. ix, sec. xvii; Va., art. xii, sec. clviii.

² Ala., art. iv, sec. ciii; Ky., sec. lix; La., sec. xlviii; S. C., art. ix, sec. ii; Va., art. iv, sec. lxiii, and art. xii, sec. cliv.

³ Ala., art. xii, sec. ccxxix; Fla., art. iii, sec. xxv; La., sec. xlviii; Miss., art. vii, sec. clxxviii; Tenn., art. xi, sec. viii; Va., art. iv, sec. lxiii, and art. xii, sec. cliv; W. Va., art. xi, sec. i.

operation of which, in the opinion of the legislature, may be injurious to its citizens.¹

II. *Public Aid*

In every state except North Carolina the loaning of the public credit and public subscriptions in stock are absolutely prohibited. Loans of credit without a referendum are also forbidden in North Carolina, except for railroads not completed at the time of the adoption of the constitution, or for those in which the state has a direct pecuniary interest.²

III. *Direct Regulation and Control*

As to connections and crossings, the rule in over half the states is that the railroads must allow each other's tracks to unite or intersect wherever reasonable and feasible, and must receive and transport each other's passengers, tonnage and cars without delay or discrimination.³

To the subject of consolidation but little attention has been devoted. In Mississippi and South Carolina the consolidation of a domestic with a foreign road (i. e. a road incorporated in some other state) is permitted only in case the consolidated company becomes a domestic corporation.⁴ Kentucky and West Virginia go further and declare that no road may consolidate its stock, property or franchise with a competing line.⁵ In Virginia no company has the exclu-

¹ Ala., art. xii, secs. ccxxix, ccxxxviii; Ga., art. i, sec. cxi; Ky., sec. ccv; La., sec. cclxii; Miss., art. vii, sec. clxxviii; N. C., sec. cxxxiii.

² Ala., art. iv, sec. xciii; Fla., art. ix, sec. x; Ga., art. vii, sec. v; Ky., sec. clxxvii; La., sec. lviii; Miss., art. xiv, sec. cclviii; N. C., art. v, sec. iv; S. C., art. x, sec. vi; Tenn., art. ii, sec. xxxi; Va., art. xiii, sec. clxxxv; W. Va., art. x, sec. vi.

³ Ala., art. xii, sec. cclxii; Ky., secs. ccxiii, ccxvi-ccxvii; La., secs. cclxxi, cclxxxiv; Miss., art. vii, sec. clxxxiv; S. C., art. ix, sec. vi; Va., art. xii, sec. clxvi.

⁴ Miss., art. vii, sec. cxvii; S. C., art. ix, sec. viii.

⁵ Ky., sec. cci; W. Va., art. xi, sec. xi.

sive right, by law, to build a parallel line.¹ South Carolina prohibits all attempts to accomplish objects forbidden by the state constitution through subterfuges, such as holding companies, stock control, and the like.² Pooling is forbidden in Kentucky and Mississippi.³ Kentucky is the only commonwealth that prohibits railroad construction by the state.⁴

Virginia and West Virginia provide for the rendering of annual reports by the railroads to the state.⁵

The all-important subject of rates is treated at more or less length in all of the constitutions except those of North Carolina and Tennessee. (a) Discriminations in charges (as well as in facilities) for the transportation of freight or passengers are forbidden in Alabama, Georgia, Kentucky, Louisiana, Mississippi, South Carolina and West Virginia.⁶ In Georgia and Kentucky the power and duty to prevent discrimination is vested directly in the legislature.⁷ (b) Passes or reduced rates for public officers are prohibited in six of the states.⁸ The ordinary exceptions are made of course, as, for instance, in the case of the railroad commissioners in Louisiana, Mississippi and Virginia.⁹ (c) There are "long and short haul" provisions in Kentucky,

¹ Va., art. xii, sec. clxvi.

² S. C., art. ix, sec. xix.

³ Ky., sec. ccxiv; Miss., art. vii, sec. cxcvii.

⁴ Ky., sec. clxxvii.

⁵ Va., art. xiii, sec. clxxix; W. Va., art. xi, sec. vii.

⁶ Ala., art. xii, sec. ccxlv; Ga., art. iv, sec. ii; Ky., secs. ccxiii-ccxv; La., sec. cclxxi; Miss., art. vii, sec. clxxxiv; S. C., art. ix, sec. v; W. Va., art. xi, sec. ix.

⁷ Ga., art. iv, sec. ii; Ky., sec. cx cvi.

⁸ Ala., art. xii, sec. ccxlv; Fla., art. xvi, sec. xxxi; Ky., sec. cx cvii; La., sec. cxci; Miss., art. vii, sec. clxxxviii; Va., art. xii, sec. clxi.

⁹ La., sec. cclxxxvii; Miss., art. vii, sec. clxxxviii; Va., art. xii, sec. clxi.

Louisiana and South Carolina, regarding which, also, the railroad commissioners may make exceptions, if in their opinion advisable.¹ (d) In four states the legislature is given full power to regulate and control passenger and freight rates.² In addition the legislatures of Louisiana and South Carolina may regulate and change the order and rules promulgated by the railroad commissions of those states.³ (e) In only one state—West Virginia—is power conferred upon the legislature to establish maximum freight and passenger rates.⁴

The topic of railroad commissions receives particular attention in the constitutions of Kentucky, Louisiana and Virginia. Such matters as the creation of the commission; the qualifications and disqualifications, number, term of office, manner of selection, compensation, causes and manner of removal and so on, of the commissioners; regular and special hearings; the taking of testimony; procedure; and annual reports by the carriers are there regulated.⁵ Louisiana and Virginia confer upon their commissions the power to make reasonable and just rates for the corporations under their jurisdiction.⁶ Kentucky, South Carolina and Virginia authorize their commissions to disregard the "long and short haul" provisions of their respective constitutions whenever it is necessary to protect the commerce of the state.⁷ In Virginia, also, the plan of a proposed issue of

¹ Ky., sec. ccxviii; La., sec. cclxxxiv; S. C., art. ix, sec. v.

² Ala., art. xii, sec. ccxliii; Ga., art. iv, sec. ii; Miss., art. vii, sec. clxxxvi; W. Va., art. xi, sec. ix.

³ La., sec. cclxxxiv; S. C., art. ix, sec. v.

⁴ W. Va., art. xi, sec. ix.

⁵ Ky., sec. ccix; La., secs. ccxvii, ccxxii, cclxxxiii-cclxxxiv, cclxxxvii-cclxxxix; Va., art. iv, sec. liv; art. xii, secs. clv-clvii. See also S. C., art. ix, secs. v, xiv.

⁶ La., sec. cclxxxiv; Va., art. xii, sec. clvi-b.

⁷ Ky., sec. ccxviii; S. C., art. ix, sec. v; Va., art. xii, sec. clx.

stocks and bonds must first be submitted in detail to the commission, and charters and licenses to domestic or foreign corporations may be issued only through this same body.¹

In every one of the constitutions there is a noticeable absence of provisions in regard to the significant questions of accounting and physical valuation.

¹ Va., art. xii, sec. clvi.

CHAPTER IV

RECENT GENERAL RAILWAY LEGISLATION ¹

I. *In General*

The first general characterization that may be made is that in spite of the fact that the laws regarding railroads passed during recent decades in the South are extremely voluminous, they are nevertheless disappointingly incomplete. "Repetitions, redundancies, elaborations, and conflicting passages" have accounted in great measure for their volume, so that important topics, like pooling and employees, have unfortunately received but scant attention. Secondly, there has been a growing tendency to provide for the incorporation of railroads only under a form of law which is applicable to other corporations than railroads. In the third place, a movement has been steadily gathering force providing for the increasing of the powers of commissions already established and for the conferring of continually larger authority upon new commissions as they are created. Fourthly, a marked increase may be noted, especially in the past decade, in acts designed to regulate the service of public carriers and to secure the greater safety of the traveling public. Finally, there has been an unfortunate drift, culminating in the Kentucky legis-

¹ See House Documents, vol. 73, 58th Congress, 2d session, for an exhaustive compilation of laws passed by all the states in the twelve years 1890-1902. This chapter is largely adapted from that compilation, and references are cited in the cases, only, of important laws enacted since 1902.

lation of 1914, toward the substitution of state control over rates and fares by means of legislative enactments, such as maximum fare laws, for the authority exercised by the commissions. States which apparently accepted the doctrine of rate control through expert commissions when they conferred extensive rate-making powers upon those commissions have seen fit to disregard that principle in the promulgation by legislative enactment of maximum freight and passenger fares. "The wisdom of fixing fares by a sweeping and inflexible statute instead of through an expert commission" has proved not alone "questionable" in the South, but subversive, in fact, of the best interests of both carriers and people. Experience has amply demonstrated that a large body, like a legislature, cannot efficiently cope with the rate situation in the South, and that the first essential of effective and intelligent control over rates and fares is the unhampered activity of a small, efficient, and impartial administrative board.

II. *Conditions of Incorporation*

1. *Organization.* In every constitution there is a provision which prohibits the incorporation of railroad companies under special or local acts; and in a few of the states this prohibition is likewise found in the general laws. The minimum subscription necessary before the articles of incorporation may be filed with the secretary of state varies from \$250 per mile of railroad in Kentucky to \$1,000 in North Carolina, with a minimum provision in a couple of states, as in Alabama, of ten per cent of the whole. Minimum cash payments which must be made on the stock subscribed for before the articles may be filed run from two per cent in Alabama to twenty per cent in Kentucky and South Carolina. The minimum number of incorporators is one in Mississippi, three in Florida and South Carolina, five in

Tennessee and West Virginia, six in Louisiana and North Carolina, seven in Alabama, Kentucky and Virginia, and ten in Georgia. The limit of the corporation's duration, where such has been fixed by the states, is from fifty years in West Virginia, sixty years in North Carolina, ninety-nine years in Louisiana and Mississippi to one hundred and one years in Georgia, with the privilege, generally, of further renewal. As to the determination of route, the laws of all the southern states are much more precise than they were in the first stages of regulation. "Under early railway methods the route was very indefinitely indicated, the best of all descriptions being frequently contained in that clause in the charter naming the termini of the road." In some charters, also, one or more intermediate points were designated, but in only a few was "the entire route described with sufficient definiteness to enable one to tell beforehand exactly where the railway would be constructed."¹ All this is now changed. In each state a map, describing the proposed route in detail, must be submitted to the proper authority. Finally, each state reserves to itself the right to alter, amend, or repeal the franchise of any railroad corporation, whether organized under special or under general laws.

2. *Stock and Stockholders.* Provisions are numerous in regard to such matters as the minimum amount of capital stock, the issuing of stock for property or services, the par value of shares (\$100 in each state), the liability of stockholders, cumulative voting of stockholders for directors (in about half the states), stockholders' meetings, the keeping of stock books and stock transfer books, the opening of books, records, etc. to stockholders, the declaration of dividends, and the like.

¹ Cf. Meyer, *op. cit.*, for an admirable description of early methods of incorporation.

3. *Officers and Directors.* The qualifications, number, length of term, meetings, reports to stockholders, and the liabilities of directors are some of the topics dealt with under this head.

4. *Liability to Public Control.* At one time or another the legislatures of all the states have enacted laws for the fixing of maximum rates, the prevention of extortion and discrimination, etc. In fact, the constitutions of many of the commonwealths require the legislatures so to act. A remarkable omission is that no southern state, so far as can be discovered,—unlike several states in the north, such as Massachusetts, Pennsylvania and Vermont—has reserved the right to purchase any railroad which it has chartered.

5. *Forfeiture.* The usual provisions are that the railroad corporation must begin work within a certain number of years after incorporation (generally two), and must complete a certain number of miles by a certain time to avoid forfeiture of charter.

6. *Powers Relative to Management.* The usual powers bestowed upon the railroads in this connection are those of regulating the time, the manner, and the charges for transportation; but in recent years the authority of the state railroad commissions has been so increased that, save in Kentucky, the roads have been confined, merely, to the regulating of the time of transportation, and in that particular, even, in a couple of the southern states,—notably Florida—their powers have been swept away.

7. *Powers Relative to Construction.* The railroads have the power to unite their tracks with those of other roads crossing their own; to connect at the state line with railroads of other states; to carry their tracks over or under highways; and to build extensions. A notable provision in three of the states—Tennessee, Virginia, and West Virginia—is designed to prevent one railroad company from holding

the exclusive possession of a narrow mountain pass or canyon. If the pass or canyon is too narrow to permit the laying of more than one track, the road which has first built through it must allow the joint use of that track to any other railroad desiring to extend its line through the canyon or pass.

8. *Powers Relative to Consolidation.* According to the usual provisions, any railroad may lease, purchase, merge with, consolidate with, or make operating contracts with any other railroad, except that the consolidation of parallel lines is forbidden. In Mississippi, the consent of the railroad commission is necessary in case of consolidation; in Virginia, a railroad company may not purchase the stock of any other corporation, save with the consent of the legislature or of a competent court; while in West Virginia the consolidation of parallel lines is permitted with the consent of the legislature, and, in Florida, with that of the commission. A peculiar provision in Georgia is to the effect that no line may be built parallel to the Atlantic and Western Railroad, so long as that road remains the property of the state.¹ Nevertheless the facts in the case "clearly and unequivocally reveal a wide disparity between the provisions of the law and the facts of railway development." When there are taken into account "the steady and uninterrupted consolidations which have absorbed line after line, on the one hand, and . . . duplication of laws attempting to govern these, on the other hand, the conclusion is irresistible that somehow these laws did not accomplish the purposes for which they were enacted."² The truth is that the southern railroads, like those of other parts of the country, by the use of holding companies, voluntary associations, gentlemen's agree-

¹ Laws of Georgia, 1915, no. lxxxvii.

² Meyer, *op. cit.*, p. 139.

ments and similar devices, were easily enabled to elude the slow-moving machinery of the law.

9. *The Issue of Securities.* Most of the southern states have contented themselves with the forbidding of fictitious issues of bonds, and have paid but scant attention to the control of stock issues. Georgia has gone much further than any other state, and by the provisions of the act of 1907 has conferred extensive powers upon its railroad commission in the matter of stocks and bonds. There is an interesting statute in Virginia according to which no railroad may borrow money until the stock subscribed for has been paid up and the proceeds have been expended. But it may borrow an amount not exceeding the stock unsubscribed for, and make such bonds convertible into stock.

III. *Construction, Maintenance and Operation*

1. *Roadway.* The width of the right of way has been limited to between one hundred and two hundred feet, save in Kentucky, where the width for one track is one hundred feet, with fifty feet for each extra track. The railroads are required to keep the way clear of weeds, trees and the like, and to construct and keep in repair culverts, bridges, drains and fences.

2. *Crossings.* An ever-increasing amount of legislation has been enacted of late, covering such points as the maintenance and construction of crossings and approaches;¹ the requirement of gates or flagmen at highway crossings, together with cattleguards and interlocking devices; and, in particular, the separation of grades. The general rule is that highway crossings are not to be at grade, if possible. In South Carolina the consent of the commission is required for the crossing at grade of two railroads.

¹ See, for instance of recent legislation, Acts of North Carolina, 1915, ch. ccl.

3. *Trains.* Regarding no other topic in recent years, probably, have so many laws been passed as about that of trains. (a) With reference to equipment, all the states have shown an increasing solicitude for the health, comfort and safety of passengers. In addition to the statutes covering the adequate heating and lighting of cars, the furnishing of drinking water, and the provision of bell-cords or other signals to the engine there has appeared, of late, an ever-growing number of laws relating to mechanical appliances. The latest example of this tendency seems to be in the prescribing of headlights of a certain power, in which Florida, Mississippi and Virginia have led the way.¹ The compulsory use of cinder deflectors is a field to which legislators are beginning more and more to turn.² Legislation in regard to the equipment of freight trains has been relatively small, confining itself mainly to the requirement of air, as well as of hand, brakes, and to the attaching of cabooses at the end of trains. Finally, there may be discerned a movement, instituted by South Carolina in 1911, for the empowering of the state railroad commission, by the legislature, to require the installation and use of safety devices.³ (b) As to the personnel of trains, legislation has been devoted chiefly to the number of brakemen required on passenger trains, or on freight trains not equipped with train brakes. Attempts have been made to enact "full-crew" legislation, similar to that now in effect in Pennsylvania and elsewhere; but thus far they have met with no success. (c) Statutes regulating the running and service of trains have been very numerous in the past decade. In nearly all the states there

¹ Acts of Florida, 1911, ch. mmmmmmmccxxxiv; Acts of Mississippi, 1912, ch. cliii; Acts of Virginia, 1914, ch. lxxxix.

² *E. g.*, Acts of South Carolina, 1909, no. lxiv; Acts of Georgia, 1912, no. dxvii.

³ Acts of South Carolina, 1911, no. ciii.

are provisions to the effect that trains must be run according to schedule, must not obstruct highways, and must stop before railroad crossings and drawbridges not protected by interlocking devices, and at certain required points (generally county seats). Other provisions regulate such matters as the sounding of a bell or whistle near crossings, the speed of trains in cities, and the running of trains on Sunday. Upon a few of the commissions (notably those of Florida, Georgia, and South Carolina) has been conferred extensive authority over train schedules and time tables. The most interesting regulations, however, have to do with the requirement of equal but separate accommodations for whites and negroes. Beginning with Florida, Louisiana, and Mississippi, the other states have fallen in line in this order: Alabama, Georgia, Tennessee, Kentucky, South Carolina, North Carolina and Virginia. Only in West Virginia is such a requirement lacking. Exceptions, of course, must be made in some instances, as in the case of small branch lines. (d) Finally, about one-third of the states, headed by North Carolina, (1907), have forbidden the serving or drinking of liquor on trains.

4. *Stations.* Regulations are numerous in regard to the provision of adequate station facilities; the lighting, heating and keeping open of stations, and the correct posting of train bulletins. Requirements as to equal but separate waiting rooms for the races, which first appeared in Alabama, Louisiana and South Carolina, are now on the statute books of over half a dozen states. In Louisiana the commission has recently been given authority over the naming of stations, both as regards those now in existence and those to be built in the future.

5. *Tickets.* A few states have set a limit to the validity of tickets, and have provided for the redemption of unused tickets. All of them, at one time or another, have made it

compulsory upon the railroads to sell mileage books, usually at rates lower than one-way fares. The latest statute in this regard is that of Kentucky (1914), providing for the issuing of mileage books of 1000 miles, or multiples thereof, at two cents a mile by all carriers with annual gross earnings of \$4,000 per mile or more, and interchangeable with all railroads earning the above amount or more.¹ Only Alabama and Florida have enacted any legislation against the practise of "ticket scalping".

6. *Baggage.* The maximum weight of baggage that must be transported free by the carriers has been fixed by a majority of the states at 150 pounds. In some states, as in North Carolina, the maximum weight is greater when the baggage is checked on a ticket calling for purely intrastate travel than when the baggage is to make an interstate journey.

7. *Employees.* Legislation with reference to the limiting of the hours of labor, the liability of common carriers in accidents, the methods and time of payment of wages, and similar topics, has been both scanty and unsatisfactory, as measured by northern standards. Georgia and Florida led the way, in the early nineties, with a limitation of the hours of labor, in which movement most of the states have since joined to a greater or less extent. In the matter of the liability of common carriers but little, unfortunately, has been done, and the railroads are still enabled successfully to set up the old plea of contributory negligence as a bar to recovery by employees. Semi-monthly payment of wages has been introduced in Virginia (1912), South Carolina (1914) and North Carolina (1915). The most advanced legislation has appeared in North Carolina. In 1907 that state provided that train dispatchers and telegraph oper-

¹ Acts of Kentucky, 1914, ch. lxviii.

ators were not to work over eight hours out of every twenty-four (though the time might be extended by the corporation commission to twelve hours in cases where the safety of the traveling public would not be endangered), and that members of train crews were not to work more than sixteen hours in every twenty-four.¹ In 1911 it was recognized that train dispatchers and telegraph and other operators had been dealt with too leniently, comparatively speaking, and the law was modified so as to read, in their case, "no longer than nine hours for day and night work, and thirteen hours for day work." Power was again conferred upon the corporation commission to extend this time for good cause shown.² In 1913 it was provided, as regards the liability of a common carrier to its employees, that contributory negligence should be no bar to recovery, since assumption of risk was not to be predicated of the employee's position.³ Lastly, in 1915, provision was made for the semi-monthly payment of employees.⁴

8. *Interference with Operation.* But few statutes have been enacted with respect to this topic. Such laws as do exist forbid, in general, any interference with railroad employees in aid of strike; prohibit the abandoning of a train by its crew in aid of a strike, except at destination; and penalize the refusal of employees, in aid of a strike on another railroad, to operate cars received from that railroad.

9. *Other Business.* In Kentucky, Virginia and West Virginia the railroads are forbidden to engage in any other business.

10. *Pooling.* But little attention has been devoted by southern legislatures to this significant topic. In fact, not a single state in the South has ever directly prohibited pool-

¹ Acts, 1907, ch. cdlvi.

² *Ibid.*, 1911, ch. cxii.

³ *Ibid.*, 1913, ch. vi.

⁴ *Ibid.*, 1915, ch. xcii.

ing. The legislators of Florida and Georgia, however, have empowered their respective commissions to prevent all unlawful combinations for the increasing of rates, and those of North and South Carolina have charged their commissions with the duty of approving or disapproving all contracts among railways.

IV. *The Regulation of Traffic*

1. *The Interchange of Traffic.* Provisions are common to the effect that railroads must interchange traffic (in Florida the provision embraces steamboats as well), and must haul the cars of connecting railroads. Several states, beginning with South Carolina, have declared that shipments must be over the route selected by the shipper.

2. *The Furnishing of Cars and Facilities.* Every state, at some time or other, has either provided that the railroads must furnish adequate car facilities or has delegated to the state railroad commission the duty of looking after this important matter. The tendency has been to clothe the commissions with ever greater power in this respect.

3. *The Classification of Freight.* The majority of the southern legislatures have wisely refrained from an attempt to do the work that even experts have been unable satisfactorily to accomplish. The most noteworthy example of classification occurred in 1907, when the Alabama legislature, in special session, prepared a classification of, and fixed the maximum rates to be charged for, the transportation of one hundred and ten articles of common use.¹

4. *The Transportation of Dangerous Articles.* Very little in the way of legislation is to be found, and that little has to do mainly with the regulation of explosives.²

¹ Acts, 1907, nos. lxiv-lxxi.

² E. g., Acts of Alabama, 1911, no. ccclxviii.

5. *Monopolies.* Contracts in restraint of trade, and monopolies have been forbidden in the laws of a few states, notably Georgia, Louisiana and South Carolina, and in a couple of the state constitutions.

V. Rates

1. *Limitation of Freight and Passenger Rates.* Every state, without exception, has undertaken at some time or other to regulate passenger fares. Until 1907 the regulation—South Carolina alone excepted—had not been such as to bear with undue severity upon the railroads. But in that year and following years, the states were drawn, as if by suction, into the remarkable “crusade” for passenger-fare reduction that swept over the United States. Virginia led by requiring the issue of mileage books at the unprecedented low rate of two cents a mile. West Virginia followed with the passage of a two-cent fare bill, applicable to all roads of over fifty miles in length; North Carolina came next with the enactment of a two and one-fourth cent fare law, and Alabama, Georgia and Kentucky (1914) fell into line with two and one-half cent fare statutes. Reductions in passenger fares and in mileage book rates were made, also, in the remaining states as the result of conferences with the commissioners of the states concerned.

The present situation is far from satisfactory. The standard intrastate rates (i. e. the rates applying to the major part of passenger traffic) range from two cents a mile in West Virginia to two and one-half cents in Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee and Virginia; two and three-fourths cents in Florida; and three cents in Louisiana and Mississippi. The interstate rate, on the other hand, is two and one-half cents a mile throughout this whole territory. Interchangeable mileage books, good for one thousand miles, are sold in

each state, except South Carolina, at the rate of two cents a mile.

In the matter of the limitation of freight rates the states have not gone to such extremes. Nearly every state has taken a hand at regulation, but most of them, by this time, have wisely relinquished all control to their respective commissions. North Carolina and Alabama have been the only states within the past decade to order reductions in freight rates by statute. The Alabama statute is still in force, and not only limits the rates that may be charged in the case of one hundred and ten important articles, but also classifies that freight for rate-making purposes.

Where rates and fares are not fixed by statutes, the state commissions are endowed with the authority to prescribe "reasonable and just" charges.

2. *Extortion, Rebates and Discrimination.* Either by constitutional provisions or by statute every southern state has laid down express prohibitions in regard to this exceedingly important aspect of railway regulation. Variation from established rates is everywhere forbidden.

3. *Long and Short Hauls.* This subject is principally an interstate matter, and yet all but two of the states (Alabama and Georgia) have seen fit to pass long and short haul provisions,¹ adopting, in the main, the language of the interstate commerce law. The essential element of elasticity has been recognized by the majority of the states having this provision, in that power has been conferred upon the commissions to "permit the suspension of the long and short haul provision in certain cases and under certain conditions,"² i. e., in cases where injustice would otherwise result.

¹ Most recently in Florida, 1914.

² Meyer, *op. cit.*, p. 146.

4. *Transportation at Reduced Rates.* Excursion and commutation tickets, and tickets at reduced rates for children, for political, literary and other gatherings, and for fairs, exhibitions, etc. are the most obvious examples. In addition, tickets at less than regular prices are often granted to institutions of various sorts, such as reformatories, charitable organizations, and the like.

5. *Free Transportation.* Most of the states have now rather narrowly restricted the granting of free passes to employees of the railroads and their immediate families. This is but in accord with the general anti-pass movement of recent years in the United States. About half of the states have gone so far as to forbid absolutely the free transportation of the railroad commissioners and their staffs. In the other states provision is still made for the free transportation of the commissioners and employees within the state while in the performance of their duties. Free passes are also granted in every commonwealth in special cases deemed particularly meritorious, as, for instance, to traveling secretaries of the Young Men's and Young Women's Christian Associations, and to ex-confederate soldiers attending annual reunions.

In every state except Kentucky and Tennessee it is now a misdemeanor for public officers to accept passes or tickets at rates other than those charged to the ordinary traveling public. It is a matter of deep regret that the legislators of those two states have not seen fit as yet to subordinate their own interests to the larger welfare of their respective states, and to remove that stigma of opprobrium that now attaches to their deliberations by reason of their failure to join the ranks of more public-spirited legislatures.

6. *Miscellaneous.* Each state has legislated in regard to such matters as the requirement of a certain number of days notice of advance in rates (and in some states, like South

Carolina and Virginia, regarding notice of a reduction in rates), the minimum for single freight and passenger charges, the exaction of an extra charge for the payment of fares on trains, the filing and publishing of rates, the posting of rates at stations, and the filing of schedules and classifications with the state commissions. In Florida, North and South Carolina, and Tennessee the railroads may be compelled to grant especially low rates for the encouragement of infant industries. Finally, in a number of the states, all roads under one management are considered one railroad for rate-making purposes.

VI. Reports

1. *General Provisions.* In each state the railroads are required to make annual reports to the railroad, or corporation, or public service commission, as the case may be, covering operations for the year ending June 30th.¹ The reports, some of the details of which are specified by law, must be made in every state in accordance with forms prescribed by the commission. In a few of the states there are also provisions for monthly reports to the commissions.

2. *Special Reports.* The railroads must report accidents to the commissions immediately after their occurrence, generally by telegraph. They must file with the boards copies of contracts with other railroads, car companies, etc. In Kentucky, Mississippi and Tennessee they must make annual reports to the commissions covering the issuance of all free passes. In Virginia they must report annually to the auditor a list of the railroad stockholders residing in Virginia, the number of shares belonging to each, and the par value of the shares.

¹ In a few states, for the year ending September 30th.

CHAPTER V

OUTLINE OF COMMISSION DEVELOPMENT

I. *Early Agencies of Supervision*

LONG before the appearance of the advisory type of commission in the United States there existed in the South, as in other parts of the country, various bodies charged with some special or formal work relating to common carriers. These bodies, known generally as Boards of Public Works or of Internal Improvements, were entrusted with such duties as the administering of state funds for internal improvements, the hearing and deciding upon of applications for state aid, the collecting of reports at periodic intervals from the railroads, and similar matters. As a rule however the members of the boards were already important officers of the state, and, as such, were so much taken up with their own official business that they were unable to devote the proper amount of time to their extra duties. And, further, they were so feebly supported by the state legislatures in the majority of cases that the wonder is that they were able to accomplish anything at all of value, so far as the inspection or supervision of the railroads under their charge was concerned. A reference to the course of development in Virginia will make these points clear.

In 1816 a Board of Public Works was created by the legislature to administer the "Fund for Internal Improvements" established shortly before. The membership comprised the governor, treasurer, attorney-general, and ten

citizens elected by the general assembly.¹ The constitution of 1830 selected the governor, lieutenant-governor, treasurer, second auditor, and surveyor of public works as the members of the board.² Three years later the board was reorganized by the legislature, and was reduced to the governor, treasurer, and first and second auditors.³ The constitution of 1851 again changed the personnel of the board. The state was divided into three districts, and three commissioners elected by the people—one from each district—attended to the duties of this office until after the Civil War.⁴ The board underwent its final reorganization in 1869, and from that time until its abolition in 1902 its membership included only the governor, treasurer, and auditor.⁵

The duties of this board, of course, were added to from time to time by the legislature. The most important legislation referred to the making of annual reports by the railroads. A statute of 1837⁶ required those companies whose lines were entirely within the state, or in whose stocks or bonds the state was financially interested, to make an annual report to the board, covering the amount of their capital stock and their gross and net receipts. This statute erred, first, in not calling for sufficient information, and, second, in not requiring all companies whatsoever doing business in Virginia, regardless of the nature of their mileage, to furnish annual returns. The first defect was remedied somewhat later, at the instance of the board,⁷ but nothing was done about the second until the passage of the commissioner

¹ Acts, 1815, ch. xvii.

² See Acts, 1831, ch. cxii.

³ Acts, 1833, ch. cxii.

⁴ Constitution, 1851, art. v, secs. xiv-xvi.

⁵ *Ibid.*, 1869, art. iv, sec. xvii.

⁶ Acts, 1836-37, sec. xxvii.

⁷ *Ibid.*, 1855-56, p. 318.

law in 1877. The penalty for failure to make annual returns involved such a slow and clumsy method of procedure—an action of debt—that many companies fell into the custom of making no reports for years at a time. There were some corporations, even, in 1876, that had never made a report to the board from the date of their organization.¹

What has been stated of Virginia was true, in the main, of the entire South. From a variety of causes those early boards or commissions, so far as the supervision of railroads was concerned, were so inefficient that their very existence was scarcely felt by the corporations under their jurisdiction.

II. *The Establishment of the Commissions*

The first railroad commission established in the South was that of Virginia in 1877,—a weak commission, very similar in its powers and duties to that of Massachusetts. South Carolina (1878), Kentucky (1880), and Alabama (1881) soon followed with other advisory commissions. Their chief functions consisted in holding the railway corporations to the terms of their charters; in investigating complaints, the most frequent cause of which seems to have been overcharges; in inspecting the actual working of the railroads, with reference, especially, to the adequacy of service; in searching out defects of all kinds; and in the reporting of abuses, accompanied by suggestions of appropriate legislation. Undeniably they served a very useful purpose. But so far as affording the people of those states any real protection from railroad oppression was concerned, they were entirely inadequate. Sooner or later the advisory commissions were cast aside in favor of more vigorous methods of regulation.

¹ See *Reports of Board of Public Works*, for 1860-61 and 1876.

The mandatory type of commission arose in the north-western part of the United States during the seventies in consequence of an agitation for state control by the farmers. The granger societies soon rallied to the support of the movement and became its most loyal adherents.¹ In 1879 the movement took root in the South with the establishment of the Georgia railroad commission, and from then on its home was chiefly in that portion of the Union. Every other state sooner or later followed suit: South Carolina in 1882, Tennessee in 1883 (abolished in 1885), Alabama in 1883, Mississippi in 1884, Florida in 1887 (abolished in 1891), North Carolina in 1891, Tennessee and Florida, again, in 1897, Louisiana in 1899, Kentucky in 1900, Virginia in 1902 and West Virginia in 1913. It is worthy of note that no southern state which has once adopted the strong type of commission has ever rejected it permanently for the advisory sort.

When the Georgia railroad commission came into existence in 1879 there was no other public body in the world, save the California commission, endowed with such arbitrary powers over rates. Nearly all the European states, to be sure, were exercising more or less authority over rates; but none of them outside of Prussia, possessed the despotic power of dictating rate schedules.² In England, for example, the Railway Commissioners were empowered merely to "arbitrate between railroads in a variety of cases"; to secure publicity of rates; and to prescribe certain through rates.³ "The primary purpose of establishing this commission was to provide a board to whom any one who had a complaint against the railroads might, without expense to

¹ Johnson, *American Railway Transportation*, 1906 ed., p. 357.

² *Railroad Gazette*, Aug. 24, 1883.

³ Hadley, *Railroad Transportation*, p. 172.

himself, appeal for aid in enforcing the act of 1854.”¹ In France the maximum limits of charges were already fixed by law; but the government was wholly without power to prescribe and impose upon the carriers a schedule of rates prepared by itself.

There was one admirable feature of the Georgia commission law that, unfortunately, has been but little copied by the legislators of other southern states. It was provided, namely, not only that the commissioners should be appointed by the governor but also, following the English law, that one of them should be an experienced railroad man. It was hazardous enough to entrust the regulation of the railroads, not to a highly-trained body of experts, but simply to three citizens, only one of whom had any special knowledge of the railroad business. But it was positively absurd to expect, as most of the southern legislatures did, that three men “entirely inexperienced in railroad business,” and “entirely ignorant of the principles underlying and controlling the fixing of rates and the establishment of tariff charges” could handle the railroad situation with justice, not alone to the people, but to the carriers as well. As the Tennessee commission well stated in its report for 1897-98,

When it is understood that the many thousands of articles transported by the railroads are divided and subdivided into classes and subclasses, and that before a reasonable, fair and intelligent classification and subclassification can be made it is absolutely necessary to have a thorough knowledge of the bulkage, liability to damage, value of the article, cost of handling, the shape in which it is transported, its inflammatory character, together with many other items of information, and that before you can establish rates upon classes the freight charges upon each article hauled must be taken in connection with the freight charged upon all the other articles trans-

¹ Johnson, *op. cit.*, p. 328.

ported; that the total amount of income so derived from shippers upon every branch of the entire system for the year in connection with all other incomes of the road, including rentals and interest upon stocks and bonds, is to be estimated in connection with disbursements of every kind in order to test the business affairs of the road and determine whether that particular rate so fixed will yield to the company a reasonable profit upon the capital invested in the enterprise, it will be seen that it presents a problem of difficult solution.¹

In fact, a more arduous task than the preparation of classifications of freight and of freight and passenger rate schedules could not easily be imagined. The men best fitted by experience to prepare those classifications and schedules were, of course, the traffic managers and experts of the railroads. But it was to eradicate the evils of the very schedules prepared by those men and in force throughout the South that the commissions had been created. The commissioners had to rely in the main, then, upon their own observations and the testimony of shippers. And it was not to be expected that their work should prove acceptable to the carriers. The consequence was a violent contest in the courts,—at times immediately upon the creation of the commissions, to determine the validity, not only of the rates and regulations promulgated by the commissioners, but also of the very existence of the commissions. All of the arguments brought to light in the granger cases of the seventies were raked up and exploited to their fullest extent in an endeavor to thwart the will of the people. Since the objections raised by the railroads brought up for discussion several points of very considerable interest and importance, it may be worth while to examine them somewhat in detail as illustrated in the conflict between the railroads and the Virginia commission in 1906 and 1907.

¹ *Report of the Tennessee Railroad Commission*, 1897-98, pp. 31-32.

In March of 1906 the Virginia legislature directed the commission to prescribe a schedule of passenger rates for all transportation companies doing business within the state. The commission, in all probability, was not bound by the resolution, for the Virginia constitution expressly prohibits the assembly from legislating in the matter of rates. In obedience, however, to what it deemed a popular demand, the commission served a notice upon all the steam railroads operating in the state, fixing upon November 1, 1906, as the date upon which they might file their objections to the prescribing of a maximum intrastate passenger rate of two cents a mile.¹

1. The railroads, first of all, challenged the right of the commission to take any sort of action in the proceeding. They maintained that the Virginia constitution, when it provided for the creation of a tribunal with judicial, legislative, and executive powers, violated the Fourteenth Amendment of the United States Constitution; for in being compelled to submit their controversies to the commission and to the commission alone,—a tribunal which is unlike the regular courts of the state—they were, they alleged, being denied the equal protection of the laws. The commissioners made short work of this argument. They simply showed that the question had been shortly before passed upon by the Supreme Court of the state, and that the provisions of the constitution in dispute had been there upheld as valid.²

2. The railroads argued, in the second place, that a contract existed between the state and those railroads which had been granted their charters before the adoption of the constitution in 1902, according to which the state had abandoned the right of prescribing tolls or charges upon these

¹ *Report of Corporation Commission*, 1906, p. ix.

² *Winchester and Strasburg Railroad Co. vs. The Commonwealth of Virginia*, 106 Va., 264.

railroads. The obligation of that contract had therefore been impaired, it was alleged, by the power conferred upon the commission of prescribing rates, and hence its action in fixing a maximum passenger rate was void.¹

In support of this second contention the carriers pointed to certain sections of the Virginia Code of 1887. Section 1240 provided that as regards the charter of any company governed by the act of March, 1837—a general law regulating the incorporation of railroads—"no law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its consent, in any other cases than such as are provided for in this chapter." Section 1242 declared that no law should so reduce the tolls of a railroad as to render impossible the payment, annually, of dividends of fifteen per cent within thirty years from the time of the first declaration of dividends, or of dividends of twelve per cent after the said thirty years and before fifty years from the same time, or of dividends of ten per cent after the said fifty years. The railroads then pleaded that their net profits had never at any time been so large as to permit them to declare the respective dividends as named above, and that the state, accordingly, was bound to them by a contract not to pass any law altering the rate of tolls or charges until such time as the dividends mentioned in the statute had been earned, — except, of course, with the consent of the companies.²

The commission answered these contentions with decisions of the United States Supreme Court,³ and with a case re-

¹ *Report of Corporation Commission*, 1907, p. 75.

² *Ibid.*, 1907, p. 76.

³ *Louisville and Nashville Railroad Co. vs. Kentucky*, 183 U. S., 503; *San Antonio Traction Co. vs. Altgeld*, 200 U. S., 304; *Chicago, etc., Railroad Co. vs. Minnesota*, 134 U. S., 455.

cently decided by the Circuit Court of the United States for the Western District of Texas.¹ It showed that the Supreme Court, on the principle that no legislature can bind future legislatures or constitutional conventions to relinquish their right to the exercise of the police power,—that vague authority which may be broadly defined as the right of the state “to do anything designed to promote general welfare as opposed to special privilege”²—has steadfastly refused to concede the validity of such a contract between a state and a railroad company. The commission therefore held that there was

nothing in the charter of any of the companies which either expressly or by implication exempted them from liability to future legislation as to the prescribing of rates, and hence no contract between the state and the railroads arose; that all the companies, whether chartered by special act of the legislature or under the general law, took their charters subject to the general laws, and to such changes as might be made in the general law, and subject to future constitutional provisions and future general legislation.³

3. Having thus disposed of these two preliminary questions, the commission entered upon a consideration of two other objections advanced by the defendant railroad companies. The railroads alleged, in the third place, that the proposed maximum passenger rate was in violation of the commerce clause of the United States Constitution, inasmuch as interstate passenger rates are often the result, in part or in whole, of intrastate rates. The commission, however, in view of the many adverse decisions of the United

¹ *Houston and T. C. Railroad Co. vs. Storey*, 149 Fed. Rep., 499.

² Beard, *American Government and Politics*, p. 440.

³ *Report of Corporation Commission*, 1907, p. 76.

States Supreme Court on this point, rejected this contention as clearly of no value.

4. Finally, the railroads brought forward their strongest and most natural argument, declaring that a maximum passenger rate of two cents a mile would be unreasonable and confiscatory. They contended that such a low rate, resulting surely in an abnormal decrease in their earnings, would necessarily deprive them, without just compensation, of a reasonable income, and that since such a taking of income is tantamount to a taking of property, the enforcement of the two-cent rate would deprive them of their property without due process of law.¹

Regarding the ultimate victories of the various commissions in the courts, sufficient has elsewhere been said. The main point is that once the authority of the commissioners and the validity of their regulations were determined in the affirmative by the United States Supreme Court, the majority of the roads bowed to the inevitable. Only now and then in recent years, comparatively speaking, have the carriers sought to hamper the commissions in their work with the vexatious delays of litigation. The contesting of orders appears to have been most frequent in North Carolina, Florida, Kentucky and Louisiana. However, with the exception, possibly, of the last-mentioned state, this practise may now be said to be decidedly on the wane.

The most important achievements of the commissioners have been the prescribing of schedules of either absolute or maximum rates, and the establishment of fixed classifications of freight. The most serious objection to the system in vogue before the advent of railway regulation was the continual fluctuation in classification that occurred,

the railroads having power to increase rates at pleasure by

¹ *Report of Corporation Commission, 1907, p. 79.*

simply making changes in classification. These changes were not only made without warning, but they succeeded one another with a rapidity that deprived shippers and consumers of any basis upon which to conduct operations—of any fixed data by which to adjust their business affairs. — Business was unsettled, confidence undermined and the movement of traffic disturbed, to the ultimate injury of all concerned.¹

These evils have certainly been reduced to a minimum by the adoption in each state of a stable freight classification promulgated by the state commission.

III. *The "Crusade" against the Railroads*

In the comparative calm of the past few years between railroads and commissions, however, there has been one significant interruption,—an interruption occasioned by an extraordinary popular movement for rate reduction and restrictive railway legislation that swept over the entire country in 1906 and succeeding years. Laws were enacted

creating railroad commissions, reducing freight and passenger rates, prohibiting discriminations and rebates, establishing penalties for delay in the transportation of goods, enforcing liability for damages to passengers, prohibiting free passes, reducing the hours of labor of railroad employees, requiring the introduction of safety appliances, prohibiting combinations and traffic agreements, and dealing with a host of other questions arising in the course of the transportation business.²

For this mass of hostile legislation the railroads themselves, to a great extent, were to blame. The deepest-seated cause of discontent on the part of the people was the widespread prevalence of that ancient evil, discrimination, which,

¹ *Report of Florida Railroad Commission, 1901-2*, p. 18.

² Wm. H. Glasson, "The Crusade Against the Railroads," *South Atlantic Quarterly*, April, 1907.

despite numerous laws on the statute books, frequent convictions in the courts, and the earnest efforts of the more intelligent railroad managers, was still flourishing,—and in no part of the country more vigorously than in the South. A *second* ground of dissatisfaction,—nearly equal in importance to the first, was the revelation by the Interstate Commerce Commission and other public agencies from time to time of the way in which railroad property had been made the subject of speculative manipulation by “insiders” in various “re-adjustments.” Stock jobbing and watering had been indulged in by nearly all the southern carriers, the classic example of which was furnished in the reorganization of the Southern Railway in 1894 by the banking house of J. P. Morgan & Co., when, as a part of the reorganization scheme, \$120,000,000 of common stock was issued to persons who paid not a single dollar in actual value for it. As a consequence, a great many of the roads doing business in the South were burdened with a volume of securities, more or less watered, which sorely handicapped them in their endeavors at betterments, and which made it a constant struggle to meet interest charges and pay dividends. A *third* ground of discontent was to be found in the inefficiency of the railroads’ service. For several years prior to 1907 the management of both freight and passenger traffic in the South had seemed, at times, “utterly demoralized”. “Worse than this, in recent months, on what are supposed to be the best railroads of the country” there had occurred “an appalling series of passenger train wrecks with hundreds of persons maimed and killed.”¹ The Southern Railway, for instance, had killed its own President. Finally, many of the roads had apparently neglected to instruct their employees in the elemental rules of courtesy to

¹ Wm. H. Glasson, *op. cit.*, April, 1907.

passengers, with the result that complaints as to the want of consideration for travellers were both numerous and well-founded.

The agitation against the railroads, however, was carried far beyond its proper bounds by the efforts of petty politicians, who, with an eye single to their own advancement, took advantage of the popular disaffection to sweep themselves into power as the champions of the people. They promptly proceeded to deal with the carriers in a most arbitrary manner, giving attention, not so much to the question of justice as between the roads and the people, as to the feathering of their own political nests.

The result of the mass of legislation that issued from the southern assemblies in 1907 and succeeding years, so far as the commissions were concerned, was to add very greatly to their powers and duties. Most of the roads, as, for instance, the Southern Railway, the Seaboard Air Line, and the Atlantic Coast Line, deemed it the "policy of wisdom to adopt conciliatory methods, to comply with the law in good faith, to give as good service as possible, and to avoid any unnecessary show of defiance or retaliation."¹ Others, however, notably the Louisville and Nashville, appealed to the courts for relief from harsh and oppressive laws on the ground that the legislature had overthrown constitutional restrictions and had virtually confiscated private property. These roads resorted to every possible legal device to hinder the execution of the obnoxious laws. In some states, as in North Carolina and Georgia, the contest was sharp and short; in others, as in Alabama and Kentucky, the railroads succeeded in holding up the orders of the commissions for half a decade or more.

Outward quiet again prevails in the southern states.

¹ Wm. H. Glasson, *op. cit.*, April, 1907.

Now and then mutterings are heard, as recently in North Carolina. But on the whole the railroads appear to have resigned themselves to a policy of conciliation and to an abandonment of methods of defiance. They seem to have determined, for the present, at least, and with but few exceptions, to give to the public the best service possible under the rigorous restrictions of present commission laws.

CHAPTER VI

VIRGINIA

I. *The Advisory Commission*

THE fight for a railroad commission in Virginia began in the session of the legislature of 1872-73, when a bill was reported, but not acted upon, which provided for a commissioner to examine into the business of the railroad companies and to report annually to the legislature as to their condition and charges.¹ At the next session in 1874-75, in response to the appeal of Governor Kemper,² a bill was introduced in the house looking to the appointment of "commissioners of transportation." The committee on roads and internal navigation, to which it was referred, reported out a substitute which passed the house rather easily but was rejected by the senate.³

Two years later the struggle was renewed, and this time with success. Bills were reported in both houses, of which the most important proved to be a bill by General Johnson, for years an advocate of the commission idea, providing for a board of three commissioners, with the power to compel the railroads to carry out the obligations of their charters, and to charge such rates only as the board should deem reasonable. To most of the senators, however, such a bill was most unpalatable, and it had to be toned down very

¹ *House Journal*, 1872-73, pp. 378-9.

² *Senate Journal*, 1874-75, p. 15.

³ *Ibid.*, p. 371; *House Journal*, 1874-75, p. 310.

considerably before its final passage in the closing days of the session. The house proposed a few amendments to which the senate agreed, and early in April, 1877, there came into existence the first commission to be established south of the Ohio and Potomac and east of the Mississippi rivers, and designed to deal with the ever-increasing perplexities of the railroad problem.¹

As finally approved by the governor, the law made provision for one commissioner, to be elected biennially by the general assembly, and with functions purely supervisory and recommendatory. It was made his duty to examine the physical condition and the manner of operation of all the steam railroads in the state as often as he should deem necessary to keep himself well-informed, and to see that the terms of their charters and the provisions of the law were fully complied with. Whenever, in his judgment, grounds should arise for changes in the mode of operation or of conducting business necessary to the promotion of the convenience and security of the public, or whenever any violation of the law should be made known to him, he was to call the attention of the company at fault immediately to the required correction. If compliance with his order did not follow within sixty days he should report such failure to the board of public works and, if so directed, apply to the circuit court for an injunction. The annual reports of the railroads were now to be made to the commissioner who, in his turn, was to submit each year to the general assembly a report based upon these returns, and embodying such statements and statistics as would clearly reveal the actual working of the railroads operating in Virginia.²

Thomas Henry Carter, elected by the general assembly

¹ *Senate Journal*, 1876-77, pp. 42, 299-300; *House Journal*, 1876-77, pp. 446, 467-68; *Richmond Dispatch*, April 3, 1877.

² *Acts of Virginia*, 1876-77, ch. ccliv.

as the first commissioner, was a descendant of an old and distinguished Virginia family, and a successful gentleman farmer. He had no intimate acquaintance, of course, with the railroad problems of his state. In his first two reports he announced the policy that he would pursue in regard to the all-important question of discrimination. He took the position that he would be entirely justified in permitting the continuance of just, as compared with unjust, discrimination.

"For it is a mistake to maintain," he said, "because local rates are in proportion much higher than through rates, that therefore local rates are necessarily exorbitant. It should always be borne in mind that the through traffic, on account of the active competition to which we have referred, must often be taken at the lowest figure inside of the slightest profit, or not taken at all."¹ "So long as there is a profit on through traffic that profit is, as far as it goes, a relief to the burden on local traffic."²

The greatest danger, in his opinion, was that the commerce and industries of the state might be unduly injured by the diversion to railroads operating in other states of through traffic ordinarily passing through and beyond Virginia, in case rates were unscientifically interfered with by governmental agencies. In common with the commissioners who came after him he appears to have been obsessed with the idea that the prosperity of his own state must be very jealously guarded, and that it was decidedly hazardous to tamper with the through rates, no matter how discriminating, so long as those rates made possible the transportation of freight over Virginia lines in place of those of adjoining and competing states.²

¹ *Report of Virginia Railroad Commissioner*, 1878, p. 8.

² *Ibid.*, 1877, p. 9.

As one reads over the reports of the commissioners from the early eighties on, however, one finds with increasing frequency the old, familiar complaint in regard to unreasonable discrimination cropping up. Shippers, for example, angrily inquire of the commissioner why they should be required to pay more to ship their leaf tobacco from Danville to Richmond than their competitors at Louisville, Ky., over six hundred miles further distant. Discriminations, in multitudes of cases, seemed to be made for no good or sufficient reasons. The commissioners reported that many of the shippers, in particular the farmers, were becoming very hostile to the railroads, and were demanding further legislation to protect them against the unreasonable differences in rates for long and short distances. They noted with some alarm that many people were favoring legislation for Virginia modeled upon the Georgia law of 1879, which had given the railroad commission of that state rather arbitrary powers in the making of rates and the examination of books, accounts, etc. They observed with evident relief that the weight of public opinion in Virginia, so far as they could judge, was still very much opposed to conferring on any one man or any set of men such inquisitorial power.¹

The office of railroad commissioner had a comparatively lengthy existence, from 1877 to 1902, when it gave place to a corporation commission. The various commissioners during those twenty-five years performed a very valuable service for the people of Virginia, more especially in harmonizing the relations of shippers and carriers in ways that seldom, if ever, came to public notice. The nature of the office encouraged the bringing of complaints of every conceivable kind regarding such matters as inadequate service, lack of proper station facilities, negligence, damages, over-

¹ *Report of Virginia Railroad Commissioner, 1880-1889*, in particular 1887-88.

charges (the commonest of all causes of complaint), and the like. And to the credit of the commissioners let it be said that their suggestions to the carriers were as a rule readily adopted, and that the majority of the complaints were adjusted to the satisfaction of the complainants.

The fact is, nevertheless, that the commissioners were unable to cope with the railroad problem as it developed on an ever-increasing scale in Virginia. There were two obstacles that stood steadily in their way, and that increased in importance from year to year. There was, first, the limited nature of their jurisdiction, and, second, the constant growth in interstate commerce, over which, of course, they had no control. If they had had the power to prescribe absolute rates they could have prevented, in large measure, that most serious of all railroad abuses,—discrimination. As it was, the railroads had only to keep within the maximum rates prescribed early in Virginia's railroad history by her legislature; and they found no difficulty in doing this, for the maximum, in the bargain, had been set entirely too high. Then, again, the commissioners had no authority over the issue of stocks and bonds by the carriers of the state, and were forced to sit idly by while financiers in New York manipulated securities and promoted consolidations that imposed a perpetual tax on the people served by their railroads.

As far as interstate commerce was concerned the commissioners were no worse off than were the commissioners of most of the other states, where the increase in this sort of commerce has been continual and at times very rapid. Suffice it to say that by the end of the century most of the freight carried in Virginia was either destined for other states or foreign countries, or was originating outside her boundaries. When complaints regarding discriminations in the transportation of such freight came to them there was very little that they could do to remedy matters.

Needless to say, there were frequent attempts during all this time to strengthen the authority of the commission, in addition to the enactment of legislation against discrimination, rebates and so on. The very year after the commissioner law went into effect the senate passed a bill increasing his powers, but it died in the house committee.¹

The session of 1883-84 was the occasion of a spirited endeavor to establish a powerful board of railroad commissioners on the lines of the Georgia law of 1879. The idea seems to have blossomed forth first with Governor Cameron. In his message to the legislature he urgently commended to its consideration "the laws by which other states of the Union, notably the states of California and Georgia, regulate the railway administration within their borders,—laws which have stood the examination of the courts and survived the test of experiment to the satisfaction of the people without injury to the railroads."² The house promptly reported and quickly passed a bill substituting for the one-commissioner system a board of railroad commissioners with extensive powers. In the senate a substitute bill was reported from committee which was rejected on its third reading by but the narrowest of margins.³

At the extra session in 1884 the lower chamber again passed a bill providing for a board of commissioners, and again it was rejected by the senate.⁴

Seven years later the struggle was renewed when Governor McKinney, in his annual message, took up the cudgels in favor of stricter regulation. After remarking upon the

¹ *Senate Journal*, 1877-78, pp. 280-81; *House Journal*, 1877-78, p. 313.

² *House Journal*, 1883-84, p. 23.

³ *Senate Journal*, 1883-84, pp. 644-45; *House Journal*, 1883-84, p. 579.

⁴ *Senate Journal*, 1884, p. 241; *House Journal*, 1883-84, p. 200. See also *House Journal* for 1885-86, pp. 374-75.

good that the railroads had done and were still doing he observed:

To see that the railroad laws of the state are faithfully executed and that the citizen is protected in all his rights against the company which may wrong him, three railroad commissioners should be selected, with powers sufficient for the purposes indicated. The people would be better satisfied with three than one. They would strengthen one another and restrain one another. Their decisions would carry more weight and give greater satisfaction.¹

Responsive to this suggestion Mr. Kent, long a spokesman in the legislature for commission regulation, introduced a measure patterned very closely after the Georgia model of 1879. It encountered but little opposition in the house, and after its passage there, was sent over to the senate for consideration.²

This bill met with the endorsement of many business men throughout the state. It found approval, for example, with the Richmond Chamber of Commerce. Moreover, at a meeting of this body held to consider the bill, representatives of the railroads were present, who stated that although they were not in favor of any kind of commission regulation, the measure under consideration was fair and moderate, and that if they had to submit to some kind of bill they would prefer to face that one.³

Editorial opinion, on the contrary, was very much opposed to conferring on the commission such authority, and in particular, the authority to fix rates. It demanded proof that the Virginia situation was of such a desperate character as to stand in need of such an extreme law, and declared

¹ *House Journal*, 1891-92, p. 24.

² *Ibid.*, 1891-92, pp. 510-11.

³ *Report of Richmond Chamber of Commerce*, 1891-93, p. 82.

that the conservative people of the commonwealth were not asking for a measure of that sort. Such a provision, it affirmed, would fall like a wet blanket on railroad enterprise; it would put an end to the building of new roads or the extension of old ones.

"Our judgment," said the most prominent of the Richmond newspapers, "is against conferring the power on the commission to originate the rates. Let the railroad companies announce their rates and schedules, and then, if they are not all they should be, let the commission notify them what they regard as fair and reasonable, and demand that the change be made. If any company declines to adopt the rates fixed by the commission, the commission should have the power to summon the company into court, there to have the questions at issue determined, and pending this decision the company's rate could continue operative, but with the express stipulation that any sums in excess of the rates finally adjudged reasonable by the court should be refunded to the shipper. Such a provision would afford to the public a sufficient guarantee against unjust and discriminating tariffs and injurious schedules."¹

The fight in the senate was exceedingly warm. But finally the opponents of stringent regulation won the day, and the bill was so amended as to lop off the most drastic provisions, including the board of commissioners feature.² With this defeat the friends of the Georgia commission idea appear to have lost heart. During the following ten years, with the exception of the session of 1897-98,³ not a single bill looking to the creation of a mandatory commission was reported in either house.

¹ *Richmond Times-Despatch*, Dec. 20, 1891.

² *Senate Journal*, 1891-92, pp. 544-45.

³ *Ibid.*, 1897-98, p. 136; *House Journal*, 1897-98, p. 214.

In the bill which passed the house and which was so radically amended in the senate in 1892 there was one very important provision that both the board of public works and the railroad commissioners had sought for many years to incorporate into the law. It will be remembered that up to that time the railroad commissioner, upon discovering a violation of the law by a carrier, was empowered merely to bring the violation to the notice of the carrier, and in case of refusal by the latter to heed this notice within sixty days, to present the matter to the board of public works for such action as it should deem proper. The board might then order the commissioner to appear before a circuit court of the state, and ask for an injunction to prevent further violation of the law. This method of procedure had not worked well in practice, for the reason that the members of the board were already so overwhelmed with the work of their respective offices that they had but little time for the consideration of communications from the railroad commissioner. Some remedy for this state of affairs had long been needed if the commissioner were to accomplish the ends for which his office had been created.

The fourteenth clause of this bill, as it was finally agreed upon by the legislature and approved by the governor, supplied the necessary relief. It provided that in case of the violation of any part of the law the commissioner should, immediately upon the receipt of a complaint, request the carrier to correct its cause. If within ten days the carrier should fail to comply with this request, the commissioner was to proceed in the name of the commonwealth against the company before a circuit court of the county where the cause of action arose, or a judge thereof in vacation. The case was to have precedence over all other business before the court, and was to be heard without formal pleadings. It should be the duty of the state attorney to represent the

commissioner. The judge, if convinced that the law had been violated, was to prevent further violation by the issuance of an injunction. Both the commonwealth and the carrier were granted the right of appeal to the supreme court of appeals,—the highest court in the state.¹

The instituting of this prompt and inexpensive manner of redress was certainly a long step in the right direction. And yet it failed to reach the pith of the situation, for discrimination continued to flourish as in years past, in spite of enactments designed to crush its existence and in spite of the frequent endeavors of the railroad managers themselves. Thus matters dragged along for years. Men who had the railroad problems of Virginia at heart and who felt dispirited at the apparent apathy of the legislature were at a loss to know what to do. They simply waited, therefore, in the hope that finally something favorable would turn up which they could utilize to their advantage; and a long wait it proved to be.

II. *The Creation of the Corporation Commission*

Not until 1901 did the opportunity arise,—an unexampled opportunity, as it proved to be. Incited by the example of Mississippi (1890), South Carolina (1895), Louisiana (1898) and North Carolina (1900), the Virginia legislature called a state convention empowered to frame a new constitution disfranchising negroes, and to put it into force without submission to ratification by the people. Among the delegates were many gentlemen with a lively interest in the railroad problem, who realized that the long hoped-for occasion had now come. Headed by the Hon. A. Caperton Braxton, at that time the foremost champion in the state of stricter regulation, they persuaded

¹ *Richmond Times-Despatch*, March 4, 1892. Acts, 1892, ch. dcxiv.

the convention to appoint a committee to consider and report upon advisable measures concerning the railway situation.

The committee reflected that although the Virginia advisory commissioner had performed a very useful service in the collection of statistics, the searching out and reporting of defects, and the like, he had been utterly powerless to protect the people from the oppression of the railroads. It considered next the administrative type of commission, such as Georgia in 1879 and North Carolina in 1899 had resorted to, whose members, in addition to enjoying the powers of the advisory commission, are clothed with the authority to prescribe passenger fares and freight rates and to require the maintenance of adequate service and facilities. It thoroughly approved the good results achieved by these boards, in themselves really little legislatures, and able, by reason of their simply designed machinery, to equal the mobility and quickness of action of even the astutest railroad managers. One defect, however,—and, that, in its opinion, a very serious one—was to be found in the working of these administrative commissions,—the lack, namely, of judicial powers. For example, this type of commission cannot enforce, of itself, its own rates or regulations. If these are not voluntarily obeyed by the carriers the commission must appear before an ordinary court and prosecute the unwilling company for their alleged violation. Courts of procedure are notoriously slow, so that it may happen that the rate or regulation, when finally passed upon by the court, may be found to be inapplicable if conditions have changed in the meantime. Then again, even supposing that the court reviews the constitutionality of the rate with extraordinary swiftness, the railroad can cause infinite delay in those states where the practice has not yet been regulated, by bringing

before the court material evidence which it has previously concealed from the commission, and which is enough to compel the court to dismiss the whole proceeding and to force the commission to begin its work all over again. Or the violations may be so frequent that the commission is unable to prosecute them all, in which case, unless private persons prosecute them on their own account and at considerable expense to themselves, many transgressions of the law go unpunished.

Such were the considerations before the convention. To the committee there seemed but one way out of the difficulty,—a bold experiment, by the way, in American practice; and it determined finally upon the adoption of that method. It proposed to solve the difficulty by the creation of an absolutely unique body,—a commission, namely, endowed not alone with administrative and legislative powers, but also with judicial powers. It determined to have all questions relating to the validity of a charge prescribed by the future commission conclusively settled at the time when the charge was prescribed, thus doing away with the delay and expense attendant upon the prevailing method of proceedings before a court, and compelling the railroads to bring forward their entire evidence during the consideration of the charge by the commission. To prevent the questioning of the commission's regulations after their promulgation, the committee proposed to give the carriers the full benefit of the indispensable principle of jurisprudence known as due process of law, by providing that the railroads to be affected by a regulation of the commission must be duly notified thereof and must have a fair judicial hearing upon every question affecting the validity of the proposed regulation. Arrangement was made for the right of appeal from the commission's decision to the Virginia Supreme Court of Appeals. To prevent any abuse by the commission of its

legislative power, from the exercise of which, of course, there can be no appeal, the committee resolved to reserve to the legislature the preeminent authority in legislation on all matters affecting railroads. An exception, however, was made in the case of the classification of freight and the prescribing of charges; for the general assembly is too unwieldy and too inexpert in railroad matters to be able to fix charges and classifications in the minute detail demanded by present-day conditions.

Finally the committee proposed to have the future commissioners appointed by the governor, and for long terms, well knowing that if the commissioners were to be elected by the legislature the result would be short terms of office and a tendency to subordinate the dignity and the importance of those offices to the political aspirations of ambitious but inferior men.¹

The report of the committee met with the enthusiastic approval of those members of the convention who were desirous of seeing an end put to the abuses of the railroad régime, and after a warm discussion its main features were elaborated and incorporated in the constitution. The constitution, as framed, was put into force without submitting it to popular ratification. Thus came into being, by a lucky chance, an extraordinary form of commission that was destined to be of immense value to the people of Virginia, and to whose creation under ordinary circumstances the legislature, with its profound reverence for the traditional policy of the division of powers, would have proved an insuperable obstacle. The commission went into office on March 1, 1903.

The Virginia state corporation commission is a board of three persons whose members are appointed by the governor

¹ *American Law Review*, vol. xxxviii, pp. 489-497. *Journal and Documents of the Constitutional Convention*, pp. 418-37.

for a term of six years, one member retiring every two years. The annual salary is \$4000 with \$500 additional for the chairman. No commissioner may be financially interested in any transportation or transmission company under the jurisdiction of the commission.

The most interesting and instructive feature of this commission is the wide extent of its functions. It is at once an administrative body, a legislative body, and a court of record.

As an *administrative* body it issues all charters and amendments thereof for domestic corporations, and supervises the foreign corporations that are permitted to do business in Virginia. Its jurisdiction extends to all save municipal corporations and institutions owned by the state. To the general assembly, however, is reserved the right to repeal any charter at any time, although it has no immediate authority to regulate the affairs of the corporation. The commission is required both to assess the real and personal property of all public service corporations, for the purpose of state, county and district taxation, and to levy the fees and franchise and license taxes laid upon those corporations. It is its duty, also, to inquire into the abuse of charter privileges by transportation and transmission companies, and into the physical condition and service of any road, in order that necessary improvements may be made as needed. Full permission is given to examine the books and papers of corporations, and to prescribe uniform methods of bookkeeping.

As a *legislative* body it prescribes classifications and rates for transportation companies, rates for transmission companies, and such other regulations as are permissible.

As a *court of record* the commission passes upon the validity of its proposed regulations, and after their enactment enforces the necessary obedience to them. It is a full-fledged court, equipped with the necessary subordinates,

with power to compel the attendance of witnesses and the production of papers, and to fine or imprison for contempt of court. The only appeal permitted from its decision is to the Supreme Court of Appeals, and this court is not allowed to examine into any evidence that was not before the commission when the question was being adjudicated. In case a rate prescribed by this body is declared void by the Court of Appeals, the latter is bound to prescribe an alternative rate, which goes into effect as if fixed by the commission. In the case of an order prescribing charges or classifications, an appeal to the Supreme Court operates to stay such order only when a bond is filed by the corporation to guarantee the repayment of any overcharges. If no such bond is filed, the charge or classification goes into effect pending the result of the appeal.¹

III. *The Work of the State Corporation Commission*

During the few months of their official term in 1903, the commissioners were unable to do more than to start the work of preparation for the arduous labors of the future. In the summer they made a tour of inspection over most of the railroad mileage in the state, examining fully into the condition of the roadbeds, the rolling stock, and the station buildings. Next, in pursuance of a section of the new constitution and of a revenue law recently enacted, they appraised the property of all railroad companies doing business in Virginia, and assessed against those companies the state franchise tax of one per cent upon their annual gross revenue.²

This done, they turned their attention to the exceedingly important problem of the classification of freight, and freight

¹ See chs. clv-clvi of the Virginia Constitution, 1902.

² *Report of Corporation Commission*, 1903, p. 6.

rates. The situation in Virginia had been very much complicated for a number of years by the prevalence of two kinds of freight classifications,—the “southern” and the “official” classifications. Roads like the Atlantic Coast Line, the Seaboard, and the Southern, which run north and south through the state, had their rates fixed and their freight classified in conformity with the “southern” classification, predominant in that part of the United States lying, roughly, south of the Ohio and east of the Mississippi rivers; while those roads that run east and west, like the Norfolk and Western, and the Chesapeake and Ohio, were governed in their freight rates and classification by the “official” classification,—the classification prevailing north of the Ohio and Potomac and east of Chicago. Articles of freight in these two classifications were grouped in classes,—articles in the first class bearing the highest rate, those in the second class a lower rate, and so on. Various articles, in addition, had been given special or “commodity” rates. Finally, the railroads were in the habit of issuing from time to time exception sheets, containing changes in both classification and commodity rates. As a consequence, then, there was a great lack of uniformity in rates on the several roads. For instance, the rate on certain articles on a given railroad differed from the rate for the same distance on another railroad. Moreover, it was no easy matter to ascertain, at any one time, just what the exact rate on a specific article between given points was.¹

With these points firmly in mind, and aware of the involved nature of the situation, the commission resolved to enter upon a detailed investigation of the question, in the belief that the fairness of the freight rates then prevalent in Virginia could not be properly determined without a previous

¹ *Report of Corporation Commission, 1904, p. 10.*

consideration of the practicability of a single uniform classification for all the railroads of the state. But before it had proceeded far in this investigation, its attention was diverted for a time to another and quite different question.

In May of 1903 the general assembly passed a law, requiring the corporation commission to "fix and prescribe storage, demurrage, and car-service charges, which may be collected by railroad or other transportation companies on freight transported or to be transported by them, and to be paid by them on freight delayed and cars not promptly furnished or placed by them."¹ The commission, as required by the constitution, addressed a notice to all the interested parties, fixing upon June 29, 1903, as the date for the hearing in this matter, and appending the rules which it had in mind to establish. After taking the testimony of many of the transportation companies and shippers, and after much deliberation, it prescribed certain rules and regulations which, on the whole, were more favorable to shippers than to the railroads.² The latter thereupon appealed to the Virginia Supreme Court. The validity of the rules was attacked by them, strangely enough, not upon the ground of their unreasonableness, but upon the grounds that the commerce clause of the United States Constitution and various acts passed in pursuance thereof would be violated in so far as the rules applied to foreign and interstate commerce; and that the Fourteenth Amendment of the United States Constitution forbids the taking and use of private property without due process of law,—a result that would follow, the appellants alleged, from certain of the rules. The court of appeals, however, basing its conclusions upon numerous decisions of the Supreme Court of the United

¹ Acts, 1903, ch. cclx. *Report of Corporation Commission*, 1904, p. 104.

² *Ibid.*, 1904, p. 45.

States,¹ refused to entertain these arguments.² A few days later, accordingly, the commission put its regulations into effect,³ and they have continued in effect ever since without dispute.

Encouraged by the favorable outcome of this matter, the commission proceeded all the more vigorously, both by informal correspondence and by formal judicial hearings, in its consideration of the freight-rate situation in Virginia. In January, 1905, it held a hearing at which the railroads appeared, and at which the feasibility of a uniform freight classification was minutely inquired into. Convinced by this hearing that such a classification was practicable, the commission then formulated a single classification for all the railroads in the state, together with such tariff sheets and circulars as were necessary to make the system complete. In August the leading railroads of the state were served with a printed notice of this uniform classification, and requested to show cause why the classification should not be put into effect. The carriers answered at considerable length, contending that the putting into effect of this classification would result, as in the previous case of the prescribing of storage, demurrage, and car-service charges, in a violation of the commerce clause and the Fourteenth Amendment of the Constitution of the United States, and urging, in addition, that their freight revenues would be unreasonably diminished thereby. Then followed many months of testimony taking, extending through 1906 and well into 1907. The final upshot of the matter was that the commission,

¹ *Lake Shore, etc., R. R. vs. Ohio*, 173 U. S., 285-297; *Cleveland, etc., Ry. Co. vs. Illinois*, 177 U. S., 514, 516; *Louisville and Nashville Ry. Co. vs. Kentucky*, 161 U. S., 677.

² *Atlantic Coast Line and Ry Co., etc., vs. The Commonwealth of Va.*, 102 Va., 599.

³ *Report of Corporation Commission*, 1904, p. 61.

fully persuaded of the necessity of a uniform classification for the skillful exercise not only of its rate-making power but also of its supervisory authority, issued an order April 27, 1907, prescribing a single uniform classification for the freight traffic of the leading railroads of the state. No objection was interposed by these roads, even though, in the main, the level of freight rates was somewhat lowered thereby, and on October 15th the order quietly took effect.¹

In the meantime, history of far greater interest was being made in another sphere of activity. The whole of the United States ever since about the beginning of the Roosevelt period had been in a state of public unrest and legislative activity. In 1906 and 1907 came the culmination in the form of a veritable "crusade" against the railroads. In harmony with the general movement, the legislators of Virginia enacted, early in 1906, the so-called Churchman Act which, in brief, directed the corporation commission to prescribe a schedule of passenger rates for all transportation companies in the state and provided that, pending this action, all steam transportation companies were to keep on hand, at every station, mileage books of 500 miles or over, to be sold at a maximum rate of two cents per mile, to be valid for use by any member of the purchaser's family, and to be redeemable as regards the unused portion. Several of the steam railroads failed to comply with the requirements of this act.² The commonwealth thereupon picked out one of the offenders—The Atlantic Coast Line Railroad Company—and haled it before the commission.

The railroad set up two main grounds of defence: first, that the commission had the exclusive power, under the state constitution, of prescribing transportation rates, and

¹ *Report of Corporation Commission, 1907*, p. 112.

² *Virginia Law Register*, vol. xv, p. 177.

that therefore the general assembly had acted without authority in attempting to fix such rates; and second, that the Fourteenth Amendment of the United States was violated by the act in question, inasmuch as its enforcement would deprive the defendant of some of its property without due process of law.

The commission, disregarding the important issue raised in the first objection, and very carefully avoiding an expression of opinion on the delicate question of the legislature's constitutional right to prescribe railroad rates, chose to base its decision on a rather minor point. It held the requirement permitting mileage to be sold at two cents a mile, if in blocks of five hundred or over, while exacting more than two cents a mile from purchasers of any mileage less than five hundred miles, to be in direct contravention of the Fourteenth Amendment, which provides that no person shall be denied the equal protection of the laws; and accordingly dismissed the complaint of the commonwealth. As to whether the act would have been upheld had it applied to the sale of mileage regardless of the amount, the commission declined to express an opinion.

An appeal was straightway taken by the state to the state Supreme Court. In November, 1906, that tribunal, in a decision which very ably reviewed the whole subject of rate regulation, took the same stand as that adopted by the commission and upheld the latter's determination in favor of the railroads.¹

The general assembly, it will be remembered, in its act of March 15, 1906, had directed the commission to prescribe a schedule of passenger rates for all the transportation companies doing business in Virginia, and had merely intended its own rates to remain in effect until such action had

¹ *Commonwealth vs. The Atlantic Coast Line Railroad Co.*, 106 Va., 61.

been taken. The commission, in all probability, was not bound by this resolution, for the constitution of Virginia expressly prohibits the legislature from regulating rates. In obedience, however, to what it deemed a popular demand, the commission served a notice in July on all the steam railroads operating in the state, fixing upon November 1, 1906, as the date upon which they might file their objections to the prescribing of a maximum passenger rate of two cents per mile for intrastate Virginia traffic. The carriers appeared on the date appointed and filed the customary objections.¹ To only one of them did the commissioners pay serious attention—the argument, namely, that a maximum passenger rate of two cents a mile was unreasonable and confiscatory. In order, then, to ascertain the principles by which this proposed rate should be judged, they made a careful examination of certain aspects of the railroad business in Virginia, such as the gross earnings of all the carriers on all Virginia business, both interstate and intrastate; the expense of conducting this business; the gross earnings from the purely intrastate business; the expense of conducting this business; and the fair value of the carriers' property used in all the Virginia business, and that used only in the intrastate business.²

The conclusions to which the commission finally came were, first, that since the transportation of passengers is a business peculiarly responsive to reductions in the rate of fare, the income of the carriers would not necessarily be diminished through the introduction of the proposed rates, and, second, that even if their revenues were diminished thereby they would still not fall off to such an extent as to occasion an unreasonable decrease in net earnings.³ Con-

¹ *Report of Corporation Commission, 1906*, p. 9.

² *Ibid.*, 1907, p. 83.

³ *Ibid.*, 1907, p. 99.

sequently an order was issued, April 27, 1907, effective in July, prescribing a maximum rate of two cents a mile for the ten strongest railroads operating in the state,¹ with a maximum rising by easy stages to three and a half cents for roads with a particularly light passenger traffic.²

The provisions of this order, it will be observed, differed in two fundamental particulars from those of the Churchman Act of the previous year: they applied only to mileage within the state, and they applied to all mileage within the state.³ The commission hoped in this way to avoid the pitfalls into which the Churchman Act had fallen.

But these hopes were soon dashed to the ground. On May 15th, six of the strongest roads in the State (the Norfolk and Western, the Chesapeake and Ohio, the Atlantic Coast Line, the Chesapeake Western, the Louisville and Nashville, and the Southern) applied to Judge J. C. Pritchard of the Circuit Court of the United States for the Eastern District of Virginia for an injunction restraining the publication and enforcement of this order. The state, represented by Attorney-General Anderson, without attempting to demonstrate the reasonableness of the rates complained of, sought refuge in an act of Congress which forbids federal courts, except in bankruptcy proceedings, to enjoin the proceedings of a state court. The attorney-general declared, therefore, that since the Virginia corporation commission is a judicial court

¹ The Norfolk and Western Railway Co.; The Chesapeake and Ohio Railroad Co.; The Atlantic Coast Line Railroad Co.; The Seaboard Air Line Railway; The Southern Railway Co. (excepting three branch lines); The Richmond, Fredericksburg and Potomac Railroad Co.; The Washington and Southern Railway Co.; The New York, Philadelphia and Norfolk Railway Co.; The Virginia and Southwestern Railway Co., and the Louisville and Nashville Railroad Co.

² *Report of Corporation Commission, 1907*, pp. 71-72.

³ *Virginia Law Register*, vol. xv, p. 177.

of record, the federal court had exceeded its jurisdiction in enjoining its proceedings.

These objections were overruled by Judge Pritchard on the ground that the commission, when it prescribes rates, cannot be recognized as a court, and he held that a federal court did have the authority to inquire into, and if need be, enjoin its proceedings. As no issue of fact had been presented to him, the only question raised having been one of law,—namely, the jurisdiction of the commission, he had no recourse under this ruling save to grant the injunctions desired by the companies.

While these injunctions were pending Governor Swanson of Virginia, with the approval of the commission, had proposed to the railroads that they allow the commission's regulations to go into effect on or before October 1st of that year, and to continue in effect until the final adjudication of the cases by the Supreme Court of the United States (for the commission had resolved, if beaten in the circuit court, to take the matter before the highest tribunal of the country.)¹ To this prudent suggestion four of the roads (the Chesapeake and Ohio, the Norfolk and Western, the Atlantic Coast Line, and the Southern) responded favorably. In a compact between the companies and the commission entered into on August 3rd the former, for their part, agreed to put into effect the reduced rates prescribed by the latter, until the decision of the United States Supreme Court should decide as to the jurisdiction of the Circuit Court and the constitutionality of the commission. The latter, on its side, desirous of having its own status determined as soon as possible by the Supreme Court, and sensitive to the enormous expense and delay which another course would occasion, agreed to make no defense on the merits of the rates which

¹ *Report of Corporation Commission, 1907, p. 107.*

it had prescribed, and as soon as the final decrees had been entered, to take a prompt appeal to the United States Supreme Court.¹ The stipulation was also made that in case the Supreme Court should deny the jurisdiction of the Circuit Court in the matter, but should uphold the constitutionality of the commission, the latter should permit the railroads to have another hearing on the reasonableness of the rates prescribed by it.

The cases were argued somewhat more than a year later, and were decided November 30, 1908, in an opinion, unfortunately very much involved, and far from satisfactory either to the railroads or to the state. The Supreme Court acknowledged the commission as a court, clothed with judicial as well as executive and legislative functions, and then went on to distinguish between legislative and judicial acts as follows:

a *judicial* inquiry investigates, declares and enforces liabilities as they stand on present or past facts, and under laws already supposed to exist. . . . That is its purpose and its end. *Legislation*, on the other hand, looks to the future, and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative and not judicial in kind.

Hence the court held that the making of rates by the commission is a legislative function, and that the circuit court is not exceeding its authority in the enjoining of orders prescribing those rates. Nay, further, even the proceedings of the Virginia Supreme Court of Appeals in the hearing and deciding of appeals from the orders of the commission in the fixing of rates may be enjoined by a federal court, for in such proceedings this highest court in Virginia is to be

¹ *Report of Corporation Commission*, pp. 104-107.

regarded, not as a court, but as a legislature. In the words of the court, the question whether in any particular case the proceedings are legislative or judicial depends, "not upon the character of the body, but upon the character of the proceedings." The main contention of the commission, then, that a Circuit Court of the United States is without authority to enjoin its orders prescribing maximum rates, was held to be without foundation.

Upon the narrow ground, however, that the railroads had erred in coming before the Circuit Court for an injunction when they should rather have appealed from the commission's order to the Virginia Supreme Court of Appeals, as provided by the state constitution, the Supreme Court held that the Circuit Court, in this particular instance, had exceeded its authority, and therefore reversed Judge Pritchard's decrees. Had the Virginia Supreme Court, it added, been granted the opportunity of passing by way of appeal upon the commission's order, and had it sustained the latter's action, then the Circuit Court would have been justified in interfering on the side of the railroads by means of an injunction. For the Supreme Court of Appeals, in revising the order of the commission or in prescribing a new rate, on appeal by the railroads from the commission's order, would have necessarily performed a legislative function, so that the Circuit Court, if convinced of the unreasonableness of the rates prescribed, would have had a legitimate right to defer their enforcement through injunction proceedings.¹

In very able and thoughtful opinions two of the most distinguished Judges of the United States Supreme Court—Chief Justice Fuller and Justice Harlan—although concurring in the reversal of the decrees, yet dissented from

¹ *Prentis vs. The Atlantic Coast Line Railroad Co.*, 211 U. S., pp. 210 *et seq.*; *Report of Corporation Commission*, 1908, pp. 5-7; *Virginia Law Register*, vol. xv, p. 179.

the reasoning of the majority. They were of the belief that the Virginia corporation commission and the Virginia Supreme Court of Appeals do not lose their status as courts through the fixing of rates by the former or the hearing of appeals from the commission's orders by the latter, and that therefore Judge Pritchard had acted without authority in staying proceedings of the commission by injunction, for by section 720 of the United States Revised Statutes a court of the United States is expressly forbidden to enjoin the action of any state court.

Immediately upon the handing down of the decision several of the railroads attempted to appeal to the Virginia Supreme Court of Appeals from the commission's order of April 27, 1907, intending, in the event of an unfavorable outcome, to secure relief through new injunction proceedings in the United States Circuit Court. A Virginia statute, however, limits the time within which an application for appeal may be made to six months from the date of the adverse ruling; and as this limit had long since expired, the application had of necessity to be refused.

Shortly thereafter, four of the companies which had been plaintiffs in the injunction suits,—the Atlantic Coast Line, the Chesapeake and Ohio, the Norfolk and Western, and the Southern, together with the Seaboard Air Line, filed petitions before the commission, declaring that the maximum rate of two cents a mile which had been in force for over a year under the agreement of August 3, 1907, had proved inadequate and unremunerative, and at times, even confiscatory.¹

To these petitions the commission granted a full hearing and extensive consideration. It declared, without reservation, that it did not intend to enforce, nor had it ever had

¹ *Report of Corporation Commission, 1909, pp. vi, 29.*

the intention of enforcing, rates so low as to prove inadequate and unremunerative to the railroads. With approval it quoted the words of a recent decision of the United States Supreme Court¹ to the effect that the owners of railroad properties which are serving the public, and which are fairly and economically operated, have a legitimate right to an income from these properties sufficient to pay reasonable dividends and provide for repairs and replacements, so that the value of the property invested may be kept unimpaired. In addition it held that the owners are "entitled to a fair and reasonable income upon the value of the property employed in the public service." What that fair and reasonable income might be in the cases under consideration, it was unable to say, nor did it think that it will ever be possible to determine upon any certain specific percentage that will pass as reasonable at all periods and under all circumstances.²

When the commission introduced its lower fares in 1907, it was in the expectation that the revenues of the various companies, if, indeed, they showed no increase, would at least not suffer a serious decrease. This expectation, however, had not been realized, for the number of passengers had not grown to the extent anticipated. In one particular, however, there had been a large, and, in the eyes of the commission, a very reprehensible increase. In nearby states such as North Carolina, South Carolina, and Tennessee, and in the District of Columbia the maximum intrastate fare was, and had been for some time, two and one-half cents a mile. The interstate rate was the same. The practice had grown up, accordingly, in the case of interstate passengers, of buying tickets to the stations in Virginia nearest to the

¹ 212 U. S., p. 1.

² *Report of Corporation Commission*, 1909, p. 29.

boundary line, of crossing the state to within a few miles of the opposite boundary line on a ticket costing but two cents a mile, and then of continuing their journey to another state at the interstate rate of two and a half cents. The commission felt that such a practice was extremely unfair to the Virginia railroads, and believed, further, that interstate and intrastate rates throughout the South should be made uniform.¹

Another consideration, also, inclined the commission toward a sympathetic hearing of the railroads' petitions. In the words of the report,

since no large business interest can be injuriously affected without injuring the community as a whole, we believe that the failure of the railways to prosper so forces the reduction of the number of their employees and their wages, so reduces the ability and disposition of the railway companies to enter into new contracts for extensions, betterments and improvements, so curtails their power to purchase supplies of many kinds, thus affecting many other enterprises whose prosperity depends upon the purchasing power of the railways, and so discourages the investment of capital in new as well as old railway enterprises, as to amount to a public misfortune. Neither the right of the public to demand good service nor the right of the public service corporations to earn, if possible, a fair return upon the value of the property devoted to public service, should be overlooked.²

In the opinion of the commission, the majority of the disputes at that time in progress between public service corporations and the public authorities were traceable to a failure on both sides to acknowledge the justice of these well-established principles.

In view, then, of these considerations, the commission

¹ *Report of Corporation Commission*, 1907, p. 30.

² *Ibid.*, 1909, pp. 32-33.

acceded to the wishes of the petitioning railroads, and increased the maximum passenger rate to two and one-half cents a mile. The roads, however, were required to continue the sale of mileage books at the old two-cent rate, in order that the needs of the public might not unduly suffer. These mileage books are still on sale at this rate, and the commission does not purpose, nor has it ever purposed, to allow them to be withdrawn without its consent.¹

In 1910 the Washington Southern Railroad, and in 1911 the Richmond, Fredericksburg and Potomac Railroad were permitted to put into effect a maximum rate of two and one-half cents a mile for the intrastate transportation of passengers in Virginia, continuing, of course, their mileage books and commutation rates at the old rate of two cents a mile. The commission made these changes, in spite of the fact that both roads were making money at the two-cent rate, for the purpose of rewarding these carriers for the economical and yet creditable manner in which they had conducted their business, and of placing them on a basis of equality with the other standard roads of the state, which for some time had been enjoying a maximum rate of two and one-half cents.²

During the past few years there has been remarkably little friction between the railroad corporations and the general public. There have been but few judicial hearings, "because of the settled policy of the commission to adjust all complaints by mediation if possible."³ The commission

¹ *Ibid.*, 1909, p. 2. The railroads affected by this order were the Norfolk and Western Railway, the Seaboard Air Line, the Chesapeake and Ohio Railway, the Atlantic Coast Line, and the Southern Railway.

² *Report of Corporation Commission*, 1910, p. 12; *ibid.*, 1911, pp. 17, 20. In 1908 the Virginia and Southwestern Railway Company had been allowed to put into effect a maximum rate of three cents a mile.

³ *Ibid.*, 1909, p. 6.

appears to have well served the purpose for which it was created. The railroads are favorably disposed toward it, because its members are experts who are familiar with the technique of railroad matters, and who are far more likely to do them justice than a slowly-moving and poorly-informed state legislature, and because, further, every single judicial act of the commission is appealable to the Virginia Supreme Court (which is not true of proceedings in any other court of the state). The general public is heartily in favor of its work, for it knows that shippers are now protected as well as can be expected against railroad oppression. The state now exercises a complete and effectual control over the railroads, and is capable of the promptest action against them, should they attempt to overthrow the safeguards which have been so carefully erected.

CHAPTER VII

SOUTH CAROLINA

I. *The Advisory Commission*

THE first bills in the legislature of South Carolina looking to the regulation of railroads through some sort of commission appeared nearly simultaneously at the beginning of the session of 1878. For those reported in the senate a substitute bill was returned by the committee on railroads, recommending the adoption of a law similar to that which had been but recently enacted by the state of Virginia. While this matter was under deliberation, the house passed a bill with much more stringent features.¹ The senate then took this up, stripped it of its harsher provisions and returned it to the house. Upon the refusal of the latter to concur in the amendment, a conference committee was appointed which decided nearly every point in favor of the senate,² so that the law finally enacted was a most conservative measure. It simply made provision, after the Virginia fashion, for one commissioner, appointed by the governor for a term of two years, whose business it should be to exercise a general supervision over the railroads, to examine their condition from time to time, and to recommend in his annual report to the legislature such changes in the law as he should deem advisable.³

¹ *Senate Journal*, 1878, pp. 43 and 82; *House Journal*, 1878, pp. 140, 197.

² *Senate Journal*, 1878, pp. 222 and 242; *House Journal*, 1878, pp. 280, 294, 309.

³ *Laws of 1878*, pp. 789-92.

When General Bonham in 1879 entered upon his duties as the first commissioner, he found affairs in a most undesirable state. As regards rates and fares, for example, there was the greatest confusion: some roads were bound by specific charges set forth in their charters; others enjoyed the privilege of charging up to a certain maximum; while in the case of other roads there were virtually no restrictions at all.¹ Again, many roads were not keeping their accounts in the form prescribed by law; while still others were either making absolutely no return of the year's operations to the legislature, or were doing it in a very incomplete manner.²

Against these difficulties the commissioner struggled manfully, and yet with little success. The utmost that he could accomplish was to secure some improvement in the form and regularity of the annual returns of the carriers,² and some progress in the betterment of their structures and equipment.³ The railroads, now responsible by law for the payment of the expenses and salaries of the commissioner's office in proportion to their gross receipts, were lax, even, in that regard, so that he was frequently embarrassed by the non-payment of these assessments.⁴

No wonder, then, that from the very start the commissioner pleaded with the legislature for some relief from these difficulties. In his report for 1879 he recommended that "so far as the legislature can do so, uniform maximum rates be adopted for all the railroads in the state."⁵ In the report for 1881 he went so far as to suggest that the

¹ *Report of Railroad Commissioner, 1880*, pp. 21-22.

² *Ibid.*, 1881, p. 15.

³ *Ibid.*, 1880, p. 10.

⁴ *Ibid.*, 1880, pp. 15-16.

⁵ *Ibid.*, 1879, p. 6.

system prevailing in Georgia be adopted, whereby power should be conferred upon three commissioners to regulate the freight and passenger tariffs of the South Carolina railroads.¹

II. *The Mandatory Commission*

These recommendations were not without their effect upon the legislators, the more so as General Bonham had been prominent for many years in the affairs of the state. At the session of 1879-80 and again in the special session of 1880 bills were introduced conforming to his proposals; but they failed to get beyond a second reading.² Success, however, was complete and speedy at the next meeting of the legislature. A bill reported from a joint select committee, and clothing the proposed commission with practically the same powers as those enjoyed by the Georgia commission was quickly carried through the senate.³ The house returned the bill with certain amendments, and the senate not concurring, a conference committee took hold of the matter. The senate rejected its report, however, and induced the house to consent to the appointment of a committee of free conference, where, finally, the lower chamber gave way.⁴ The South Carolina law,⁵ then, was practically a copy of the Georgia statute. General Bonham, Mr. Jeter—a former railroad president—and Mr. Walker were named as the members of the new commission.

Before entering upon their work they visited the Georgia

¹ *Report of Railroad Commissioner*, 1881, p. 17.

² *House Journal*, 1879-80, p. 36; *ibid.*, 1880, p. 456; *Senate Journal*, 1880, p. 246.

³ *Senate Journal*, 1881-82, p. 204.

⁴ *Ibid.*, 1881-82, pp. 503, 528, 548-49, 681-82; *House Journal*, 1881-82, p. 536, and *Charleston News and Courier*, Dec. 21, 1882.

⁵ *Laws of 1882*, pp. 10-19.

commissioners in Atlanta and obtained from them information of the greatest value, inasmuch as the laws creating the two commissions were fundamentally alike. Upon their return they set about the task of bringing order out of the existing chaos. The greatest irregularity among the different carriers was still rampant, each road having its own method, or rather lack of method; and to add to the confusion, there was no uniform classification of freight for the various railroads serving the state.

After some months of investigation the commission prepared and submitted to the carriers a standard schedule of passenger and freight rates and classifications. For interstate freight traffic the railroads were permitted to continue the use of the Southern Railway and Steamship Association Classification, the standard freight tariff being made applicable to intrastate tonnage only.¹ Regarding charges, maximum rates were established for each road, based upon the principle of distance alone, and without reference to direction of movement or to the point of shipment or destination.² Any reductions from those maximum rates were required to be uniform and non-discriminating in their effect. As a result the rates for long distances were but little changed,—reduction—as was to be expected—coming mainly in the charges for short distances.³

As to passenger rates, the railroads were grouped in three classes, with a maximum fare of three cents per mile for the eight supposedly strongest railroads of the state, a maximum of three and one-half cents per mile for most of the others, and a maximum of four cents for the rest.⁴

¹ *Report of Railroad Commission*, 1883, pp. 7, 11.

² *Ibid.*, 1883, p. 5.

³ *Ibid.*, 1883, p. 8.

⁴ *Ibid.*, 1883, p. 11.

As was soon discovered from the reports of the railroads, this tremendous reduction in rates went entirely too far, and proved that the commissioners, in their efforts to bring some sort of unity out of the existing disorder, had acted without a proper regard for the rights of these corporations. The rates had been in operation no longer than three months when the legislature felt obliged to quiet the clamor of the carriers. The commission's rates were amended to read as follows: a maximum of three cents per mile for those roads, only, whose passenger earnings were exceeding \$1,200 per mile per annum; a maximum of three and one-half cents for roads with earnings between \$700 and \$1,200; and correspondingly higher rates for the other railroads.¹ The result of this act, of course, was to increase rates greatly in comparison with those prescribed by the commission. Only two roads, for example, were now left in the three-cent class, and only three in the three and one-half cent division.

Vigorous complaints, also, in regard to the schedule of freight rates imposed upon them by the commissioners were made by the carriers to the legislature. The drastic provisions of the law had withheld from the roads the right of an appeal to the courts from the rate decisions of the commission, and it was but natural for them to petition the legislature for relief. And this was not slow in forthcoming, for at the very next session the suggested amendment was passed, with the further provision, even, that the railroads might make their own rates, subject to the approval of the board. Very sensibly, however, it was added that in the case of an appeal from the commission to the courts the rate objected to by the railroad was to remain in force during the length of the appeal, and was not to be changed until after a decision favorable to the road.²

¹ *Report of Railroad Commission*, 1884, p. 7; *Laws*, 1884, p. 759.

² *Ibid.*, 1884, p. 5.

The consequence of this legislative encroachment upon the domain of the board of railroad commissioners was the development of greater harmony between the people and the railroads than had been known for many years before,¹—a harmony, however, that never would have arisen so early had the commission been allowed to go unrestrained in its rather hasty and ill-considered work of regulation. This good feeling was shortly increased by further concessions to the carriers. First, the commission did what it should have done at the outset, and applied the classification of the Southern Railway and Steamship Association,—with a small exception sheet, to be sure,—to intrastate as well as interstate traffic. Then the legislature further raised the average of passenger fares within the state by providing that the maximum of three cents per mile should apply only to those roads whose earnings were exceeding \$1,800 per mile per annum, with corresponding increases in fare for the other roads.² As a result, not one carrier was left in the three-cent class, and fares were placed at a level where they would once more yield a fair return. In view of the sparseness of the population and of other conditions, a fare of four or of four and a half cents a mile was but a reasonable charge for the majority of the South Carolina railroads of that day to exact from the traveling public.

Since the strife of those early years there has been but little controversy, comparatively speaking, between the commission and the railroads. In the main, the recommendations and regulations of the commissioners have been accepted without dispute by the carriers, so that resorts to the courts by either side have been most infrequent. This result would appear, moreover, to have been due as much to

¹ *Report of Railroad Commission*, 1884, p. 11.

² *Ibid.*, 1885, pp. 8-10.

the forbearance and patience of the one as to the good sense and compromising spirit of the other.

When the commission law was passed the expediency was not then recognized of putting under the jurisdiction of the board the matter of joint rates as opposed to rates on tonnage moving over one railroad merely. But with the tremendous increase of traffic in the late eighties joint rates came uppermost in the minds of the commissioners, and after repeated recommendations¹ for control over these rates the requisite authority was finally conferred by the legislature in 1893.²

By the same act the prescribing of maximum rates of passenger fare was restored to the commissioners, from whom it had been taken in 1884. They hastened at once to make use of their power by reducing the maximum for all roads to four cents or less per mile.³ The carriers, of course, were now in a better condition than they had been ten years previously to withstand the effects of this reduction, though in view of the panic of 1893 and of the accompanying years of distress the action of the board was, to say the least, rather premature. And by 1897 the maximum rates for the principal lines had been still further reduced to three and one-quarter cents per mile.⁴

As the tonnage of any particular business increased, reductions, as seemed warranted, were made by the commission in the carrying charges. In 1899, for example, the cotton tariff, which had not been changed since its issue in 1886, was subjected to a careful revision.⁵

¹ *E. g., Report of Railroad Commission, 1891, p. 10.*

² *Laws, ch. xv, title xii, sec. v.*

³ *Report of Railroad Commission, 1893, pp. 16, 99.*

⁴ *Ibid., 1897, p. 7.*

⁵ *Ibid., 1899, p. 10.*

In 1903 the Southeastern Freight Classification was adopted as the official classification of the state, on the ground that the freight tariffs would thereby become more intelligible to the public.¹

Late in that year a complaint was filed by the Charleston bureau of freight and transportation and by other bureaus to the effect that the intrastate rates in South Carolina were unreasonably high and oppressive, and petitioning, therefore, for a reduction. Investigation of this complaint by the commission went on for nearly a year, when the situation was found to be as follows:—freight rates in South Carolina, on the whole, were lower than in Virginia and but a trifle higher than those prevailing in North Carolina and Georgia; while passenger rates were lower than in either Virginia or North Carolina, and about the same as those in Georgia. The complaint was accordingly dismissed.²

When defects in the commission law have made themselves manifest, the board has urged upon the legislature the desirability of their removal. Scattered through the pages of reports for the past twenty years are recommendations, for example, for the authority to make commodity rates,³ for the provision of special legal counsel,⁴ for the appointment of an inspector of railroads,⁵ and so on. As usual, the legislatures have been too busy with their own projects to pay much attention to these appeals.

South Carolina was remarkably free from litigation of the character that involved most of the other southern states

¹ *Report of Railroad Commission*, 1903, p. 17.

² *Ibid.*, 1904, pp. 11, 22.

³ *Ibid.*, 1902, p. 14; 1903, p. 16; 1904, p. 34.

⁴ *Ibid.*, 1907, p. 12; 1908, p. 20; 1909, p. 18.

⁵ *Ibid.*, 1907, p. 12; 1908, p. 20; 1909, p. 18; 1913, p. 11.

from 1907 on in their efforts to establish lower passenger rates. As a result of conferences between Governor Ansel and the commission, on the one hand, and the railroads, on the other, the three leading roads in South Carolina (the Southern, the Atlantic Coast Line, and the Seaboard Air Line) voluntarily put on a flat passenger rate of two and one-half cents a mile and issued mileage books at the rate of two cents a mile.¹ The commission thereupon extended the two and one-half cents rate to three of the other carriers operating in the state.² This was in 1908.

An unfortunate controversy soon developed, however, over the new requirement by the railroads abolishing the "pulling" of mileage on trains and requiring its exchange for passenger tickets at ticket offices. The commission has no authority over the sale of mileage books, and its efforts at compromise were of no avail.³ The legislature, in 1911, enacted a law requiring the acceptance of mileage by conductors on trains. The railroads retaliated by withdrawing their interchangeable mileage books and substituting individual intrastate books. They will not accept mileage from their interstate, interchangeable books for any part of a journey within the state, so that to avail oneself of the privilege of mileage-book travel throughout South Carolina one must purchase four mileage books (one from each of the four strongest companies) at an outlay of eighty dollars.⁴

In November, 1912, the commission submitted the question to the Interstate Commerce Commission, alleging dis-

¹ *Senate Journal*, 1908, p. 188; *ibid.*, 1909, p. 39; *Report of Railroad Commission*, 1908, p. 4.

² *Ibid.*, 1908, pp. 6-7.

³ *Ibid.*, 1908, pp. 9-10.

⁴ *Ibid.*, 1912, pp. 10-11.

crimination by the railroads against South Carolina, and requesting the passage of a uniform rule or regulation covering the entire mileage-book question.¹ Hearings were held in Charleston and in Washington, at the conclusion of which the Interstate Commerce Commission refused to grant the relief demanded. The South Carolina commission thereupon submitted the question to the legislature.²

¹ *Report of Railroad Commission*, 1912, p. 11.

² *Ibid.*, 1913, p. 10.

CHAPTER VIII

GEORGIA

I. *The Railroad Commission to 1907*

THE question as to the desirability of a commission to supervise or regulate the railroads in Georgia appears not to have arisen until the comparatively late period of the waning seventies. In the summer of 1877 a constitutional convention met in Atlanta for the purpose of revising the fundamental law of the state, and it was there that the subject of railroad regulation received its first general discussion. When the report of the committee on finance, taxation and public debt was laid before the convention it was found to contain a clause wherein the duty was laid upon the legislature of enacting legislation looking to the abolition of unreasonable rates, extortion, discrimination, and the like. A lengthy and spirited consideration of this issue then followed. The general sentiment soon displayed itself as favoring some sort of regulation. Finally a substitute proposed by Mr. Reese was adopted in lieu of the original paragraph,¹ and incorporated in the constitution as follows:

The power and authority of regulating railroad, freight and passenger tariffs, preventing unjust discriminations, and requiring reasonable and just rates of freight and passenger tariffs, are hereby conferred upon the General Assembly, whose duty it shall be to pass laws from time to time, to regulate

¹ *Proceedings of the Constitutional Convention of Georgia, 1877*, pp. 378, 385-410, 466.

freight and passenger tariffs, to prohibit unjust discriminations on the various railroads of this state, and to prohibit said railroads from charging other than reasonable and just rates, and enforce the same by adequate penalties.¹

No provision in express words, it will be noticed, was made for the establishment of a commission.

Great caution and care were exercised in the carrying out of these constitutional provisions. Committees of both houses had the matter long under advisement, both during the following legislative session and in the vacation thereafter. Discussion was invited from business and railroad men; and leading citizens were freely consulted during the preparation of the bill. The measure that resulted, therefore, was "no violent and indiscreet action, made recklessly and in haste, but was a carefully considered act, so framed as to gauge the powers of the commission in order to adapt them to the protection of all interests."²

When the session of 1879 opened, sentiment throughout the state was developing very rapidly in favor of the creation of a railroad commission. Even experienced railroad men, either through communications in the press or in statements before the two railroad committees, appeared as sponsors for a commission clothed with ample power, while held to a rigid performance of the duties required of it.³

For the flood of bills introduced in the house under the railroad clause of the constitution the house committee on railroads reported a measure with provisions as drastic, perhaps, as those of any commission law in the country at that time. In little more than a week this bill passed the house and came up for consideration in the senate. The

¹ Georgia Constitution, 1877, art. iv, sec. xi.

² *Third Report of Railroad Commission*, 1881, p. 10.

³ *Atlanta Constitution*, July 17, 1879; *Railroad Gazette*, Oct. 24, 1879.

upper chamber thereupon adopted a measure of its own of a milder character. Then followed the usual deliberations in conference committee. In the end the whole matter was settled by the giving way, in the main, of the senate.¹

The creation of a carefully constituted commission was hailed as the solution of the whole matter. The impression seemed to be that the decisions of such a body

would result in the true and exact principles of justice that lie at the bottom of this question, upon which could be based a code of laws so just in their application and so wise in their operation that never again would there ever seem to be any conflict between the interests of the railroads and the rights of the people.²

The statute made provision for a commission of three members, appointed by the governor with the consent of the senate. The term of office was fixed at six years—an admirable improvement upon the American practice at that time of short terms—with the proviso that in the case of the commissioners first appointed one should retire at the end of two, and another at the end of four, years. The restriction of the law also required that one should be a lawyer, another a railroad expert, and the third a man of affairs.

Upon the commissioners there was bestowed an almost unprecedented authority. They were given the power to investigate the books and papers of the companies, to subpoena and examine witnesses, and to make any other examinations necessary for the purpose of ascertaining whether the rules and regulations against extortion and unjust discrimination

¹ *Railroad Gazette*, July 31, 1879; *Senate Journal*, 1879, pp. 364, 565, 568, 635; *House Journal*, 1879, p. 1996; *Laws*, 1878-79, art. no. cclxix, part i, title xii.

² *Atlanta Constitution*, Sept. 12, 1879.

were being violated. All arrangements between carriers as to rates of transportation or respecting a division of earnings by competing roads were to be submitted to the commission for examination and approval. Semi-annual reports were to be made to the governor, covering in detail the operations of the roads for the period preceding, and based upon the returns which the railroads were now required to file with the board in a systematic manner.

Regarding the all-important matter of charges for intrastate traffic—interstate traffic being acknowledged as beyond supervision—the commissioners were clothed with rather arbitrary powers. The duty was laid upon them of making “reasonable and just” rates of freight and passenger tariffs, and “reasonable and just” regulations for the prevention of abuses such as extortion, unjust discrimination, and the like. They were also to prepare schedules of “reasonable and just” rates for the different carriers, such schedules to be “sufficient” (and not merely *prima facie*) evidence in the courts that the rates therein fixed were just and reasonable. These schedules were to be published in the papers of the leading cities of Georgia for at least four successive weeks before going into effect. Violations of the rules and regulations of the commission were made punishable by fines of from \$1000 to \$5000, to be recovered through actions in the county courts instituted in the name of the state by either the attorney-general or solicitor-general.¹

Where so much authority was vested in the hands of only three men, the personnel of the board was of fundamental importance. Governor Colquit rose to the occasion. Disregarding the pressing appeals of scores of candidates, some of them capable and some not, he selected three men of as fine a reputation as could be found in all Georgia, and not one

¹ Laws of Georgia, 1878-79, pp. 125-131.

of whom, so far as could be learned, had made application for the positions. Former Governor Smith, a leading lawyer of the state; Mr. Barnett, an accomplished publicist and man of business; and Major Wallace, one of the most prominent railroad men of the South, were the gentlemen whose appointment was "received with unqualified satisfaction all over the state."¹

With the two chief objects of the law—the prevention of extortion and of unjust discrimination—in view, the commission set to work to "do equal and impartial justice to both railroads and people". An examination of the passenger tariffs of the roads operating in Georgia revealed an average rate of from five to six cents a mile. Deeming these tariffs much too high the commissioners reduced those of the most important carriers to a maximum of four cents a mile, with corresponding reductions for the other roads. Experience soon proved that the increase in travel occasioned thereby was adding materially to their earnings. The question as to the reduction of passenger charges below the maximum fixed by the board was left with the carriers themselves, since the law placed no restrictions upon reductions of this sort.²

The desirability of a standard freight classification was apparent to all. One of the first duties of the commission, therefore, was the preparation and promulgation of such a classification. The rates then in force upon the Western and Atlantic Railroad were used as a basis upon which to construct a standard tariff. Percentages upon this standard were prescribed for all other roads corresponding to the business being done and to their general condition. The result was a material reduction in freight rates over the

¹ *Atlanta Constitution*, Oct. 16, 1879.

² *2d Report of Railroad Commission*, 1880, p. 5.

former figures, a reduction applying principally to the chief articles of production and consumption.¹

From time to time reductions were made in the maximum passenger tariffs of various railroads, experience proving that the revenues of these roads, far from being diminished by reductions were, on the contrary, somewhat augmented through the increased volume of travel. By the end of 1882, nearly all the Georgia carriers had been restricted to a maximum charge of three cents per mile.²

These reductions in freight and passenger rates were not made without vigorous opposition on the part of the railroads. The most famous case was that brought by the Georgia Railroad and Banking Company. A bill was filed by this company in 1882 against the commissioners for an injunction against the enforcement of certain rates of freight prescribed by the commission. The main ground of complaint was that the company was authorized by its charter to charge certain other rates—higher, of course, than those fixed by the commission—and that the legislature could not legally take this constitutional right away. The injunction was denied, however, and on appeal first to the state Supreme Court and then to the United States Supreme Court the decision of the court below was affirmed.³ The legality of regulation of railroads in Georgia, therefore, was now definitely established, so that the commission was enabled henceforth to proceed the more vigorously in its course of supervision and control.

In 1885 the carriers announced their purpose of seeking legislation at the approaching session of the general assem-

¹ *2d Report of Railroad Commission*, 1880, p. 5; *ibid.*, 21st Report, 1892-93, p. 6.

² *4th, 5th and 6th Reports (combined) of Railroad Commission*, 1882, p. 7.

³ *Railroad Gazette*, March 2, 1883; 128 U. S., p. 182.

bly that would so amend the law of 1879 as to make it more consistent with their views and wishes. They alleged, first, that the very existence of the commission was injurious to the public interest, inasmuch as the introduction of capital into the state for the building and equipping of railroads was virtually at a standstill from fear that the commissioners might so exercise their powers as to render such investments valueless. The commissioners answered with the following statement of facts: (1) Six times as many miles of railroad had been built during the first five years of the commission's life as had been built in the five years prior to its creation; (2) more of the stock of roads operating in Georgia had been purchased by foreign capital and at higher rates from 1879 to 1885 than at any like previous period; (3) non-resident capitalists had purchased the control of three Georgia roads; and (4) Georgia stood second among the states south of the Ohio and east of the Mississippi rivers in the amount of mileage constructed during the first six months of 1885.¹

The railroads alleged, in the second place, that the execution of the law by the commission had so impaired their credit as to depress the value of their stocks considerably, and to make it almost impossible to place new bonds for the redemption of their old ones. In reply to the former accusation the commissioners stated that instead of a depreciation there had really been an appreciation in the value of Georgia railroad stocks, and this, too, in spite of the general depression in business. As for the bonds, the board demonstrated by a table that those of most of the companies had undergone absolutely no loss in value since 1879.²

The railroads were unable to assail successfully the cor-

¹ *11th Report of Railroad Commission*, 1885, pp. 3, 6.

² *Ibid.*, 1885, pp. 7-10.

rectness of these statements, and the threatened legislation never developed into law. "It will at least be conceded," said the commission a few years later, "that the commission has not . . . thrown even a pebble in the pathway of our noble state in her triumphal march to wealth and prosperity."¹

In 1887 the standard freight tariff and classification, which had not been revised since its promulgation in 1879, was subjected to a thorough overhauling.²

The troublesome subject of joint rates was the next important question to concern the commission. In 1889, at the request of the board the legislature conferred upon it the unqualified "power to make just and reasonable joint rates for all connecting railroads doing business in this state as to all traffic or business passing from one of said railroads to another".³ The power thus granted was exercised the following year. But the rule had not been long in operation before the commission was convinced that it was practically being disregarded by the carriers. The railroads, on the whole, simply refused to conform their charges to the regulation of the board, knowing that not one shipper in a hundred was aware of the exaction of the illegal charge. Whenever complaint was made to the commission the offending railroad promptly refunded the overcharge—amounting, in some cases, to but a few dollars; and having thus disposed of that particular complaint, continued its extra-legal policy as before. The proportion of overcharges thus refunded was deemed by the commission to be but trifling in comparison with the aggregate amount illegally collected. The legislature was accordingly appealed

¹ *16th Report of Railroad Commission, 1887-88, p. 9.*

² *Ibid., 15th Report, 1887, p. 5.*

³ *Laws, 1889, pp. 131-32.*

to for the enactment of a law by which the board might institute an action to secure the penalty provided by law, without giving the railroad any notice to make reparation.¹ The general assembly quickly responded in the manner suggested.² The commissioners, of course, proceeded cautiously in the exercise of their new power, taking action in cases, only, where they were satisfied that the violation of their regulation was wilful and intentional. The consequence was that the railroads were soon stopped in their course of nullification, and that Georgia, perhaps more than any other southern state, thus early enjoyed the advantages derived from a vigorous administration of joint-rate rules and regulations.

Of the succeeding years of the commission's work up to the general reorganization of the board in 1907 there is little to relate. The carriers simply adapted themselves to a system which they were powerless to overthrow, and complaints by shippers and travelers as to intrastate traffic were comparatively few. The commissioners from time to time declared that in Georgia there was to be found what was "perhaps the best exemplification of government control of railroads to be found in the country".³

And yet the commission law, in the opinion of the board, was still very defective. So year after year, almost, it entreated the legislature for the grant of further authority; for power, for instance, over the issuance of stocks and bonds by the railroads; for the extension of its control over sleeping and parlor-car companies and over street and electric railways; and, chiefly, for the provision of legal ma-

¹ *19th Report of Railroad Commission*, 1890-91, p. 6.

² *Laws*, 1890-91, vol. i, p. 147.

³ *28th Report of Railroad Commission*, 1899-1900, p. 3; *ibid.*, 29th Report, 1900-01, p. 11.

chinery to compel prompt compliance with its orders by the carriers.¹ In Georgia, as in the other southern states, the only remedy for a violation of a rule or regulation or an order of the commission was to sue in the courts for a penalty. But there the action would drag along for months, the railroads thus continuing the wrong long after the commission had undertaken to rectify it. The board therefore sought repeatedly to be empowered to invoke the courts by the summary remedies of mandamus or injunction for the speedy enforcement of its orders and regulations.

Members of the commission went so far, at times, as to draw up and have reported in the legislature the necessary bills for the enactment into law of these recommendations.² Notwithstanding their repeated efforts their pleas long fell on deaf ears, and it was not until the waves of the widespread agitation of 1906 and succeeding years broke upon Georgia that the recommendations of the commissioners were seriously taken up.

II. *The Railroad Commission since 1907*

By the provisions of the Candler act of 1907³ the railroad commission was almost completely reorganized, its jurisdiction being greatly extended and the duties imposed upon it largely increased. It was in reality transformed into a corporation or public utilities commission like that of North

¹ *23rd Report of Railroad Commission*, 1894-95, pp. 19-20; *ibid.*, 1895-96, pp. 16-17; *ibid.*, 1896-97, p. 14; *ibid.*, 1898-99, pp. 13-21; *ibid.*, 1899-1900, pp. 9-10; *ibid.*, 1901-02, pp. 4-7; *ibid.*, 1902-03, pp. 4-7; *ibid.*, 1903-04, pp. 7-9; *ibid.*, 1904-05, pp. 8-11; *ibid.*, 1905-06, p. 3.

² *E. g.*, *House Journal*, 1891, p. 147; *ibid.*, 1892, p. 187; *ibid.*, 1893, p. 286; *ibid.*, 1896, p. 527; *ibid.*, 1897, p. 464; *ibid.*, 1899, p. 178; *ibid.*, 1901, p. 251; *ibid.*, 1902, p. 124; *ibid.*, 1903, p. 100; *ibid.*, 1904, p. 271; *ibid.*, 1906, p. 525; *Senate Journal*, 1896, p. 190; *ibid.*, 1902, p. 206; *ibid.*, 1903, p. 68; *ibid.*, 1905, pp. 198, 464, 606.

³ *Laws*, 1907, pp. 72-81.

Carolina or Virginia, possessing authority very nearly as extensive.

The most interesting feature of the new law was that which referred to the issue of stocks and bonds by the corporations under the commissioners' jurisdiction. The duty was laid upon the commission—for the first time in the history of commission regulation in the South—of promulgating such rules regarding the issuance of stocks and bonds as would both put an end to the evil of overcapitalization and assure to innocent purchasers and holders securities representing true, and not fictitious, values. The main purpose of the legislature, as in Texas, was to "squeeze" as much "water" as possible out of the roads operating in the state,—for they were, and still are, heavily overcapitalized as a result of loose construction methods, reorganizations, and so on.¹ The commission has fixed certain rules which must be followed in petitions for the approval of an issue of securities, such as a full description of the railroad's property, a detailed statement of its financial condition, a recital of the amount and kind of stock or bonds (with the terms and rate of interest) and how secured, a statement of the use to which the capital secured is to be put, and the like.² As to the working of the law there is a lamentable lack of information in official publications. The reports of the commissioners, for instance, are nearly silent in this regard.

According to statements of the chairman of the commission, however, the working of the law has been very effective in practise, in spite of the fact that the board has no adequate accounting or engineering departments upon which to rely in the evaluating of proposed enterprises. Many an

¹ *Laws*, 1907, no. ccxxiii.

² *35th Report of Railroad Commission*, 1906-08, pp. 47-50.

over-capitalization project, he states, has been quashed by the refusal of the commission to indorse the highly speculative plans of promoters and others. If the commission is not satisfied with the proposals and showing made under the rules by petitioning companies, it requests them to have an audit and evaluation made by an engineer named by itself. However, the civil engineer attached to the commission, with the assistance of other departments of government, has now collected, and is still collecting, a large amount of data as to unit costs, rates, *etc.*, which is proving of continually greater value in the matter of the approval or disapproval of security issues.¹

As in other southern states the commission was considerably embarrassed for a while by litigation over the question of passenger fares. Just before the old commission went out of office in 1907 it promulgated an order reducing the rates of passenger fare on nearly all the railroads operating in Georgia. When the new commissioners came into office they were petitioned by the railroad companies to revoke this order, or at least to extend the time of the reduction. After an "elaborate hearing" the commission declined to interfere in any way. Most of the companies yielded as a result of negotiation, while a few attempted to sue out injunctions. But no railroad was able to obtain the grant of even a temporary restraining order.²

There has been some agitation of late for a revision of the "port rates" of the state, *i. e.*, for a revision of the charges for freight transportation from all interior points in Georgia to the ports, and from the ports to all interior points. For years, practically, all the roads extending from

¹ Letter of Professor William A. Shelton, of the University of Georgia, to the author, January 4, 1916.

² *Senate Journal*, 1907, pp. 11-13; *35th Report of Railroad Commission*, 1906-08, pp. 14, 78.

the coast into the interior have been under the control of railroads running north and south. These trunk lines have sought, of course, to divert to themselves traffic that would naturally move through the ports by maintaining a high level of rates to and from the ports. In this way they secure a greater portion of the through haul. When the membership of the commission was increased from three to five in 1907, it was understood by many that this increase was provided merely to secure a majority in that body in favor of a scaling down of these port rates. Yet in spite of appeals from the governor and others, all efforts to effect a "revision downward" have been defeated.¹

The most pressing need at present is a thorough and scientific revision of the freight classification and standard tariff, which, as they exist to-day, are largely antiquated and contradictory.² But the commission, with the meagre funds at its disposal, hesitates to enter upon this expensive task. The same problem is before not a few of the other southern commissions.

¹ *Senate Journal*, 1908, pp. 18-21; 1911, p. 34; 1912, p. 57; *House Journal*, 1913, pp. 50-51.

² *Report of Railroad Commission*, 1913, p. 13.

CHAPTER IX

KENTUCKY

I. THE ADVISORY COMMISSION

THE first bill ever reported in the legislature with provisions looking to the establishment of a railroad commission appeared in the senate at the session of 1879. This bill, called into life probably by the creation two years previously of the office of railroad commissioner in Virginia, followed very closely the outlines of the law of that state. It met with favor in both houses, and was quickly enacted into law.¹ Provision was made for a commission of three members—one member representing the farmers, another the business interests, and the third the railroads—appointed by the governor, with the consent of the senate, for a term of two years. They were to examine into the condition of the roads; prosecute violations of the law—aided by the authority to inspect books and papers; issue subpoenas and examine witnesses; and make annual reports to the governor, based upon the returns of the carriers.² A typical advisory commission, in other words, was thus established.

No sooner had the commission organized than complaints poured in from all parts of the state, and in many localities indignation meetings were held, at which resolutions demanding relief from extortionate charges were passed.

¹ *Senate Journal*, 1879-80, pp. 690, 709; *House Journal*, 1879-80, pp. 1215, 1288, 1392; *Report of Railroad Commission*, 1881, pp. 205-06.

² *Laws*, 1879, ch. mxix.

These resolutions were forwarded to the railroads through the commissioners. The latter, after a lengthy survey of the situation, concurred in the belief that the prevailing freight and passenger rates were excessive, and urged a general reduction upon the roads. The railroads, however, did not look at the matter in this light, so that the most persistent hammering by the commission did little but secure from them a few reductions applying to certain localities only.¹

The commissioners then called a conference of the railroad officials of Kentucky, and submitted the following propositions: An average reduction of twenty per cent upon all freight tariffs then in force; a reduction of passenger fares to a standard rate of three cents a mile; and no advances, in future, in freight rates, without a public notice of thirty days prior to the going into effect of the charges.² As matters then were, tariffs were subject to the slightest fluctuations of the market, so that farmers and business men had the greatest difficulty in calculating ahead to any extent.³

A committee of five railroad representatives was appointed to reply to these propositions. In due time a pamphlet was forwarded to the commission, in which the rates and fares on the various lines were upheld and the commissioners' requests rejected.⁴ Circular letters were thereupon mailed to the recalcitrant carriers, urging upon them the necessity of a reduction in their charges, and threatening them, in case of non-compliance, with an appeal to the legislature for more restrictive legislation. The response, as before, was very unsatisfactory. The Louis-

¹ *Report of Railroad Commission*, 1881, p. 10.

² *Ibid.*, 1881, pp. 7-8.

³ *Ibid.*, 1881, p. 103.

⁴ *Ibid.*, 1881, pp. 8, 11.

ville and Nashville reduced its freight charges at a couple of points and two or three roads announced their intention of operating under a maximum passenger fare of three cents a mile; but there was no general reduction by the carriers such as the commission was striving for.¹

The commissioners were convinced, for one thing, that the power to persuade railroads by investigating and reporting requires a much longer time to consummate its purposes than it would if compulsory power was lodged in the hands of a commission in this state, as in Georgia, California and other states.² It will be well for us, they continued, to put aside the idea that the law of competition will prevail here in Kentucky as in the dry goods and grocery trade; the conditions are so different that we must seek something beside competition to bring us cheap transportation. . . . The law of competition does not, and will not, regulate transportation on railroads, and bring it down to a fair and reasonable basis.³ . . . In Kentucky the ratio of competitive points to the non-competitive points, or, in other words, the area of country in which competition in railroad traffic brings rates down to a fair rate, or below it, as the case may be, stands to the area of country where competition has no effect, as one to twenty. In this state of case we get a fair rate or less for one-twentieth of the people, and nineteen-twentieths have to pay an unfair rate, and make up the deficit, if any, to the railroads where competition reduces the rate below a paying point. We are therefore shut up with but two avenues of escape—one is appeal to the "soulful sympathy" of corporations—the other by appeal to the legislature to do justice to the railroads and to the people it represents by vesting the right in a railroad commission to apply such enactments as to its wisdom may seem just and right.⁴

¹ *Report of Railroad Commission*, 1881, pp. 31-33.

² *Ibid.*, 1881, p. 14.

³ *Ibid.*, 1881, p. 24.

⁴ *Ibid.*, 1881, p. 26.

These first commissioners, nevertheless, did a valuable work for the people of the state. They gathered and disseminated much useful information; they satisfactorily adjusted countless complaints; and they induced a number of the companies to reduce their passenger fares to a maximum of three cents a mile. Further, the able chairman of the commission, Mr. J. F. Johnston,¹ impressed with the greater importance of the supervision of interstate, as contrasted with intrastate, commerce, put forth a novel proposition that met with favor even in many conservative quarters. He proposed, in brief, a national railroad commission, composed of the chairmen of the various state railroad commissions and with a gentleman appointed by the President from the District of Columbia as its head, with complete power to adjust, without appeal, all questions relating to interstate traffic.² This suggestion was most interesting, perhaps, as pointing the way to the overthrow of old state political prejudices through the growth of vast business interests.

To the appeal of the commission for assistance the legislature responded with an apparent enlargement of its powers.³ But when the new commissioners came to apply the provisions of the law in 1882, they found this purpose thwarted by the inconsistent and incongruous language of the new act. They discovered that their powers and duties were practically the same as those of their predecessors. Whether purposely thus drawn or not, it was evident that the legislature had determined to proceed cautiously in the matter of government supervision and regulation, preferring to let the state endure the evils resulting from im-

¹ See *Railway Age*, Oct. 27, 1881.

² *Report of Railroad Commission*, 1882, p. 12.

³ *Laws*, 1881, pp. 68-73.

proper railroad management rather than to drive away capital by harsh or extreme measures.¹

The most fruitful source of trouble at this time, as indeed, in the entire South, was the high level of local rates. Dissatisfaction was greatly intensified, moreover, by the steady movement toward consolidation,—a movement practically unhampered by the state, that had progressed until nearly all the main lines of transportation were under the control of three corporations, chief among them being the Louisville and Nashville. Moreover, they had become powerful enough to compel the navigation companies operating on the Ohio and other rivers to join with them to a great extent in the fixing of rates.²

The commission found itself powerless to render material assistance to shippers. Yet it did not think it proper for the legislature to prescribe "cast-iron rates", or to confer such power on the commission, for it feared that such a step would deter capital from coming into the state, when it was perfectly evident that Kentucky was in great need of more and better railroads. It appealed, therefore,—though in vain,—to the legislators for the power, merely, to supervise changes in rates and to prescribe a uniform system of accounts.³

The greatest burden of complaint on the part of shippers had to do with the charges exacted for the transportation of coal. The extensive coal fields in the eastern and southwestern parts of the state had but recently begun to be developed on a large scale. The commission, upon investigation, found that every road with a mine upon its own line was striving to foster that mine at the expense of mines on

¹ *Report of Railroad Commission*, 1882, pp. 4-5, 10.

² *Ibid.*, 1883, pp. 52-55.

³ *Ibid.*, 1883, pp. 67, 77.

other lines. Thus, while hauling coal from its own mine at a low through rate, it was charging a high local rate for the transportation of coal coming from the mines of other roads. Investigation also convinced the commissioners that coal ought not to be sold anywhere in Kentucky for more than ten cents a bushel, whereas the average price was actually far above this,—running often as high as sixteen cents.¹

In an informal way they submitted to the companies a proposition to the effect that all charges for the haulage of coal should be at the same rate as the charges for transportation from their own particular mines. They urged that the cheapening of the retail price of coal would bring about such an increased consumption as more than to offset, in revenue, the decrease in the rates charged.²

The railroads, however, would have none of this, and politely but firmly refused compliance with the commission's request. All protests of the latter, for more than a decade following, were disregarded; and all recommendations to the legislature for increased powers, or for the placing of restrictions upon the price of this necessary article of commerce were ignored.³ In 1896, for instance, the cry came from all parts of the state that the coal rates were too high, and yet the board found it itself "powerless to remedy the evil".⁴

For some years after the establishment of the commission a vigorous and persistent effort was made at each succeeding session of the legislature, with but one exception, to repeal the commission law. These efforts, supported as they were by a numerous lobby of railroad officials and em-

¹ *Report of Railroad Commission*, 1885, pp. 11-13, 16.

² *Ibid.*, 1885, p. 13.

³ *Ibid.*, 1886, p. 11; 1887, p. 22; 1889, p. 4; 1893, p. 49, and 1896, p. 16.

⁴ *Ibid.*, 1896, p. 15.

ployees, seem to have rested, not upon the notion that the commission's powers were excessive, but rather upon the point that the railroads were private affairs and therefore not subject to legislative control.¹ Not until a new state constitution was framed and adopted in 1891, in which the supporters of commission control secured the insertion of provisions which made the commissioners constitutional officers, and continued in force the existing laws regarding their powers and duties, was an end put to those attacks.²

Still the commission labored on under the greatest difficulties. For one thing, the burden was upon the board of proving the unjustness or unreasonableness of rates or charges—an extremely difficult and somewhat expensive matter. Again, there was no fund provided to meet the expenses of prosecuting violations of the law. As a result, punishments of corporations for extortion and unjust discrimination were few and far between. And in 1896 the commission was deprived of all power whatever to supervise rates by a decision of the Kentucky Court of Appeals. Two years previously, upon a recommendation of the board filed before a county jury, a number of indictments had been returned against the Louisville and Nashville Railroad Company, "charging that corporation with extortion, unjust discrimination, undue preference and the violation of the long and short haul section of the constitution".³ From a verdict in favor of the commonwealth the carrier appealed, as a last step, to the Court of Appeals. That court held all portions of the law in question, excepting the long and short haul clause, to be unconstitutional and "void for uncertainty", in that they failed to prescribe a standard of just-

¹ *Report of Railroad Commission*, 1888, p. 4; 1891, p. 6.

² Kentucky Constitution, 1891, sec. ccix.

³ *Report of Railroad Commission*, 1900, p. 11.

ness and reasonableness, by which the railroads might regulate their conduct.¹

This decision put it squarely up to the legislature to afford relief by appropriate legislation. The commission recommended the enactment of a law that should either declare, in unmistakable terms, what just and reasonable compensation is, or fix reasonable maximum rates of charges.² A bitter fight at once developed. At the session of 1898 a bill was finally pushed through both houses, empowering the commission to make just and reasonable freight rates. It fell under the displeasure of the governor, however, and he vetoed it, assigning as his reason its alleged unconstitutionality. Nothing daunted, the friends of the measure rallied again to its support at the following session of the legislature, and this time—June, 1900—all opposition was bowled over.³ Power was conferred upon the commission, either upon complaint or upon its own motion, to prescribe “reasonable and just” freight and passenger rates in place of those which should be found to be extortionate.⁴ The wording of the statute, however, left much to be desired in the matter of clearness, with the unfortunate result that misunderstandings soon arose between the board and the railroads as to the interpretation of the law—misunderstandings which have only recently been removed by a decision of the United States Supreme Court.

II. THE COMMISSION UNDER THE MCCHORD ACT OF 1900

Before the commission had even undertaken to enforce the provision of the new law, suits were filed by the leading

¹ 57 S. W. Rep., p. 508.

² *Report of Railroad Commission*, 1896, p. 16.

³ *Senate Journal*, 1900, pp. 396, 690.

⁴ *Report of Railroad Commission*, 1900, p. 13.

carriers in the federal courts, praying for the issuance of injunctions. The issues came before Judge Evans, who rendered his decision in favor of the railroads.¹ An appeal was at once taken by the commissioners to the United States Supreme Court. Carefully avoiding an expression of opinion as to the constitutionality of the act, that Court unanimously reversed Judge Evans on the ground that the suits had been prematurely brought, since no order prescribing rates had as yet been made by the commission.²

The commissioners, whose hands had now been tied for over a year and a half by the injunctions, resolved to proceed cautiously at first, in order to avoid possible litigation. When complete files of the tariffs in force upon each road operating in the state had been finally collected they began an investigation of the numerous complaints that had accumulated since the passage of the new act.³

The attention of the board was diverted for a while from this work by a request from Governor Beckham to ascertain the truth or falsity of frequent rumors in the press and elsewhere, to the effect that the consolidation of various competing and parallel railroad lines in the state was being stealthily undertaken by certain outside interests. After a lengthy study of the situation the commission filed a complaint before the Interstate Commerce Commission late in 1902, alleging that J. P. Morgan and Co., at the head of a voting trust in control of the stock of the Southern Railway and in possession of entrances into both Chicago and St. Louis, had obtained control over the stock of the Louisville and Nashville and the Atlantic Coast Line—two competitors of the Southern Railway—and in so doing had acted

¹ *Report of Railroad Commission*, 1900, p. 13.

² *McChord vs. L. & N. R. R. Co.*, 183 U. S., 502.

³ *Report of Railroad Commission*, 1902, pp. 10-12.

contrary to the provisions of the Kentucky constitution. At the hearings before the Interstate Commerce Commission a large number of witnesses, including Mr. Morgan himself, were present and testified. The testimony brought out the fact that many of the parties who were in control of the Northern Securities Company had contemplated the formation of a Southern Securities Company to hold a majority of the stock of the southern railroads. The whole proceeding soon came to an end, however, upon the handing down by the United States Circuit Court of Appeals and, on appeal, by the United States Supreme Court, of decisions in the Northern Securities case, to the effect that such a plan of consolidation could not legally be executed.¹

It was not until the autumn of 1905 that the commission determined upon a vigorous course of action with reference to a revision of charges. Somewhat earlier, one Guenther had filed a complaint with the board in which he alleged that all charges on intrastate freight moving to and from local points in Kentucky were discriminating and excessive. He prayed the commission, therefore, to revise and adjust all such rates. Subsequently, three lumber companies and also the state of Kentucky petitioned to be made parties complainant to the Guenther proceedings, which petitions were granted. The railroads then appeared before the commission and objected that the complaints against them were not sufficiently definite and specific, in that they specified neither the rates claimed to be exorbitant nor the commodities alleged to be discriminated against.²

The commission ruled, nevertheless, that the entire subject of railroad rates in Kentucky was now before it for consideration. In order to pass intelligently upon this dif-

¹ *Report of Railroad Commission*, 1902, pp. 13, 89; 1903, pp. 10-11.

² *Ibid.*, 1909, pp. 317-18.

ficult matter a number of extended hearings were had, and the railroads were given a full opportunity to justify the rates then in force. In view of the fact that the greater part of the state was traversed and served by five large companies—the Louisville and Nashville, the Illinois Central, the Southern Railway, the Chesapeake and Ohio, and the Cincinnati, New Orleans and Texas Pacific—the commission resolved to confine its investigation mainly to those roads.

In their answer the carriers denied that any of their rates were either unjust or discriminatory. They argued, further, that the various communities and businesses throughout the state had been built up and fostered under the existing adjustment of rates and that “any radical departures from this adjustment would be disastrous, not only to the shippers but to the communities served by the railroads.”¹ It was finally agreed by both sides, however, that four representative months from the year 1905 should be selected, and that the carriers should furnish to the commission all the information obtainable for those months regarding such matters as capitalization, construction, operation, amount of traffic (both interstate and intrastate), income and the like.

As the measure of the cost of doing business, the railroads took the percentage of operating expenses to gross receipts, as had been done in the celebrated *Smyth v. Ames* case by carriers attacking the rates fixed by the Nebraska legislature. In elaborate tables they sought to prove that it was costing them from ten to twenty-five per cent more to conduct the purely intrastate business than the average of all business done within the state, and that “this excess cost or percent should be added to the proportion of oper-

¹ *Report of Railroad Commission, 1907, p. 63.*

ating expenses to gross receipts for all traffic to indicate the cost to the carrier for the intrastate business.”¹ The Louisville and Nashville, for instance, reported that the percentage of its total operating expenses to its total earnings in Kentucky, both interstate and intrastate business included, was 69.16, and that the cost of conducting its purely intrastate business was greater by twenty per cent. Adding 3.42 per cent as the proportion of its state taxes, it asserted that the cost of carrying its intrastate traffic during 1905 (based on the four representative months) had amounted to the amazing total of 97.58 per cent of its gross earnings on such freight.²

The commission quickly pointed out the fallacy in these and similar claims. It showed that a factor such as 69.16 did not stand for total cost at all, nor for any part of the cost, but simply represented “the relation between the total cost expressed in dollars and cents and the total receipts expressed in dollars and cents”. The cost and the earnings might both be high or both be low, and yet the same relation might exist. “The cost of doing a particular part of the whole traffic may be more than the average cost, and yet the percentage of that cost to high earnings on that particular traffic may be less than the percentage of the whole cost to the gross earnings.”³ Clearly the cost to the carriers of a given amount of traffic had no “necessary connection with the earnings derived from that traffic”, said the commission.

The board then went on to show that the intrastate rates in effect at that time had come down from the past with but very few changes. Little had been done for many years, said the commissioners,

¹ *Report of Railroad Commission, 1907*, pp. 65-66.

² *Ibid.*, 1907, p. 66.

³ *Ibid.*, 1907, p. 67.

except to occasionally lower or raise some of them, notwithstanding the fact that the volume of business has very greatly increased, and the receipts of all the railroads have steadily grown, and the remarkable improvement in motive power and equipment enables them to handle the traffic with much less labor and cost proportionate to the volume of business done.¹

Investigation revealed, further, that the rates charged by the railroads operating north of the Ohio and east of the Mississippi rivers were very much lower than the rates in force throughout Kentucky.

It was but natural, therefore, for the board to come to the conclusion that the majority of the intrastate freight rates were, as contended, extortionate and unreasonable. Schedules of maximum freight rates were accordingly prepared and promulgated in the summer of 1906 and made to apply to the leading railroads of the state. For the purpose of giving effect to this order the Southern Classification was adopted as the official freight classification of Kentucky.²

Bills were at once filed in the United States Circuit Court by the Louisville and Nashville, and by three other companies, contending, on certain grounds, that the order was void, and praying for the issuance of injunctions. The Circuit Court, disregarding the important claims that the order was confiscatory and also void for want of power in the commission, decided in the company's favor on the ground that both the act of 1900 and the commission's order were in violation of the Fourteenth Amendment of the United States Constitution.³ The commissioners denied the jurisdiction of the Court in the case, and appealed to the United States Supreme Court. That Court, in an opinion handed

¹ *Report of Railroad Commission, 1907, p. 62.*

² *Ibid.*, 1907, pp. 75-80.

³ 103 Fed. Rep., p. 216.

down in April, 1909, and once more cautiously avoiding the question as to the constitutionality of the McChord Act of 1900, affirmed the final decrees of the court below. It held that since the language of the statute did not expressly confer any power upon the board to "enter upon a general investigation of every rate upon every class of commodities carried by all the railroads of the state from and to all points therein, and to make a general tariff of rates throughout the state", the bestowal of such an enormous power could not be assumed by implication.¹

There was nothing for the commission to do, accordingly, but to bide its time and to await a favorable opportunity for the renewal of its program of rate reduction.

In the meantime, some relief had been extended to the shippers of the state by the commission in the eradication of a long-standing evil. In the early history of the Kentucky board the legislature enacted a "long and short haul" law very similar to the "long and short haul" clause in the Interstate Commerce Commission Act of 1887, bestowing upon the commissioners, however, the power to relax the severity of this law in case they should deem it expedient to do so. The operation of this law was soon found to be very discriminating against the business interests of the state in favor of the interests of other states and, in particular, of the cities of other states just beyond the Kentucky line. This was due, mainly, to a ruling of the Interstate Commerce Commission, whereby interstate railroads were permitted to make rates into points in Kentucky based on "the lowest combination". Repeated efforts, naturally, were made by the shippers of the state to secure relief. In 1899, for instance, a strong attempt was made, in connection with the struggle over the proposed increase

¹ 213 U. S., p. 198.

in the commission's powers, to secure the nullification of the law. It failed; and yet the movement was rewarded with a measure of success, inasmuch as the commission was induced to grant the exemption of a few "common points" from the operation of the law.¹ "Common points" was a designation for such places in Kentucky as were served by a river and a railroad, or by two or more railroads.

Decisive action was finally taken in 1908, after a long fight headed by the Louisville Board of Trade. In hearings before the commission during that year, numerous glaring inequalities were brought to light. It was shown, for example, that Louisville shippers, in many instances, were being forced to pay higher freight rates to points within the state than shippers in Cincinnati, St. Louis, Indianapolis, Chicago, Memphis, *etc.*, notwithstanding the fact that the difference in distance in each case was in favor of Louisville. First-class freight was being carried from St. Louis to Robards, near Henderson, Ky., at a rate of fifty-two cents, and from Cincinnati at a rate of fifty-five cents; whereas Louisville shippers to the same point, though many miles nearer than their competitors in St. Louis and Cincinnati, were compelled to pay fifty-six cents. On the "lowest combination" basis it was pointed out that the rate from Louisville would be but forty-three cents. "In order to give full relief," it was urged, "it was necessary that every point in the state should, in the making of rates, have the benefit of its proximity to the nearest common point."² The traffic manager of the Louisville and Nashville testified that his company would willingly conform its rates to the "lowest combination" basis, if permitted to do so by

¹ *Report of Railroad Commission, 1908*, p. 38; *Louisville Evening Post*, Nov. 24, 1908.

² *Ibid.*, p. 38.

the commission; and he was of the opinion that all the other roads doing business in Kentucky were likewise willing to conform.¹

The upshot of the investigation was that the commission issued an order, relieving the railroads from the operation of the "long and short haul" clause, "to the extent of permitting them to make rates based on the 'lowest combination' in all cases in which such lowest combination would give a lower rate than that which would otherwise apply."² Why the commission, however, did not take this step long before is unfortunately not explained in the pages of its reports.

In 1910 came the opportunity for rate-reduction for which the commissioners were waiting. In March of that year the Louisville and Nashville withdrew some special rates which it had given years before to the owners of distilleries along its lines in Kentucky. Numerous distillery companies complained to the commission that the new rates levied in the place of the old were exorbitant. The board sustained their contention and proceeded to prescribe, as maximum rates, the special rates that had but recently been withdrawn.³ The railroad thereupon moved for an injunction, attacking the action of the commission as in violation alike of certain provisions of both the state and federal constitutions. On a showing of irreparable injury, a restraining order was granted by the Circuit Court, but the motion for an injunction was denied. Upon appeal to the United States Supreme Court the commission was sustained, the Court holding that the board had full power, after notice and hearing, to prescribe reasonable maximum intrastate

¹ *Louisville Evening Post*, Nov. 24, 1908.

² *Report of Railroad Commission*, 1908, p. 39.

³ *Ibid.*, 1913, pp. 463-64.

rates in the place of such rates as it might deem extortionate or discriminatory.¹

The Louisville and Nashville, nothing daunted, then filed an amended and supplementary bill, bringing in as defendants the parties in whose favor reparation had been awarded by the commissioners, and again moved for an injunction. The application was denied by the United States Circuit Court, and the Supreme Court, on appeal, again affirmed the order of the court below.² Thus recently, in January of 1915, after nearly fifteen years of struggle in the courts, was the true status of the commission finally determined.

In their Report for 1911 the commissioners took occasion to refer to the crudeness and imperfection of the laws concerning state regulation of railroads in Kentucky, and to remind the people and legislators that their state had lagged far behind every other southern state (except West Virginia) in that important matter.³ For one thing, the statute imposed various important duties upon the carriers, while it failed to provide any penalty for non-performance. For example, no penalty was attached to the departure by a railroad from its published tariffs. In the second place, the commission was still without power to require the railroad companies to form through routes and to make joint rates—a stage which practically all the remaining southern commissions had long since passed through. Again, no power had been conferred upon the board to promulgate demurrage rules, or rules regulating the duty of the carriers to furnish cars to shippers. Further, the railroads had no penalty to fear for failure to provide sufficient accommodations for the transportation of either passengers or freight after the

¹ 231 U. S., p. 320.

² 235 U. S., pp. 602-10.

³ *Report of Railroad Commission*, 1911, pp. 3-6.

lapse of a reasonable time from the giving of notice by the commission. Finally, and most important, there were as yet no restrictions upon the power of the roads to increase (or decrease) their rates upon traffic wholly intrastate. There was no requirement—contrary to the practise elsewhere throughout the South—of a notice to the public of an intention to increase rates,—so that shippers had no opportunity to be heard prior to the date of their going into effect, while the commission had no authority either to suspend or prohibit the increase. “A proper regard for the business interests of the state,” said the commissioners quite correctly, “demands that the right to make the increase should be determined before it actually takes effect, rather than after it has taken effect.”

Nevertheless the commission believed that it would not be the part of wisdom for the state to go as far in the regulation of railroads as most of the southern commonwealths had traveled. It would not do, for instance, to enact a comprehensive law governing every detail of railroad operation and management, such as had recently been passed in New York. “As crude and imperfect . . . as our present law is,” declared the commissioners, “we believe . . . that we should be content for the present with an amendment of the existing law to the extent that experience has clearly shown it to be defective.”¹

The legislation which the commission had in mind was introduced in both the senate and the house; but the railroad and other interests combined to defeat it.²

In their report for 1912 the commissioners again recommended the passage of the legislation which they had shortly before proposed. They urged, in general, that power be

¹ *Report of Railroad Commission, 1911, p. 3.*

² *Ibid., 1912, p. 13.*

conferred upon them to put an end to railroad practises detrimental, in their opinion, to the public, and to prescribe rules necessary for the public convenience and not unreasonably burdensome upon the carriers. In particular, they asked for the authority to compel the physical connection of railroads where circumstances and the public convenience justify it; for the power to investigate the causes of all accidents (and not alone, as limited by the statute, to cases, merely, where death ensued), "with a view of minimizing the injuries to passengers and employees and protecting their lives"; and for the enactment of an anti-pass law. It was altogether likely, as the commission suggested, that the want of such a statute had long played an important, and perhaps a chief, rôle in the prevention of that stricter legislation so ardently desired for years by both commissioners and public-spirited men. It was high time, indeed, that Kentucky should fall in line with its more progressive sister commonwealths.¹

The most urgent appeal of the commissioners, however, was for legislation that would permit the people of the state to enjoy the full benefit of her many navigable streams. As matters then stood, whenever a waterway route attempted to compete for traffic with a railroad, the railroad simply reduced its rates to such an extent as to force the water carrier sooner or later either to abandon the field or to sell out to its rival. With the competition removed the rates were raised to the former, or possibly an even higher, level. The commission was of the opinion that the best way to stamp out this abuse would be to provide that in case a railroad company should reduce its rates by reason of water competition, those rates were not to be increased unless the railroad could show that transportation conditions had

¹ *Report of Railroad Commission*, 1912, pp. 13-14.

meanwhile changed. This was essentially the ruling of the Interstate Commerce Commission. Then, with capital invested in water carriers protected, like that in railroad carriers, by the laws of the state, "the citizens of Kentucky will be privileged to reap the benefit of nature's generosity." Nevertheless, in view of the steady dwindling of river tonnage in Louisiana, despite sympathetic action by the state commission and the prompt and reliable service of the steamboats, it is much to be doubted whether the anticipations of the commissioners were not entirely too lofty.

In their report for 1913 they again drew attention to the many defects in the law,¹ and in the following year they repeated the recommendations of former reports.² In the effort to remedy conditions, certain legislation was again presented to the assembly. Like its predecessors, however, the legislature of 1914 refused to come to the assistance of the commissioners.

In consequence, the authority enjoyed by the Kentucky commission, by comparison with the power conferred upon the commissions of the other southern states, is almost insignificant. There is probably no state railroad commission in the entire United States with jurisdiction and powers more circumscribed than the railroad commission of the conservative state of Kentucky.

In recent years a movement has been growing in the state, sponsored by men of high station, for the transformation of the board into a public utilities commission. That this movement, in view of the present state of the public mind towards corporations, will be crowned with success in the relatively near future, cannot seriously be questioned.

¹ *Report of Railroad Commission, 1913*, p. 2.

² *Ibid.*, 1914, p. 8.

CHAPTER X

ALABAMA

I. THE ADVISORY COMMISSION

As early as 1873 the attention of the legislature was directed in the annual message of the governor to the advisability of creating some officer of state to be charged with the duty of collecting statistical material regarding the various railroads of Alabama. "All departments of the state government," affirmed Governor Lewis,

and more especially the General Assembly, are in need of the statistics which such an officer would obtain for their information and intelligent direction. . . . And these vast miracles of modern invention now involve so much of life and property, and tend to infringe on human rights in so many respects—that the duty of intelligent legislation can no longer be performed without a full knowledge of all facts necessary to their just and careful supervision.

He recommended, therefore, the enactment of a law creating the office of commissioner of railroads and insurance companies.¹ But no attention was paid by either house to this suggestion.

The next reference to the railroad question on the part of the executive was made by Governor Cobb in 1880. "Your sole object," he stated to the legislature,

will be to correct abuses and to prevent extortion and unjust

¹ *House Journal*, 1873, p. 12.

discriminations by the railroads; and to attain this you should not hesitate to exert all the power vested in the legislature. I am not prepared to assist you with specific recommendations, . . . but I will coöperate with you in devising, shaping, and perfecting such action as to your judgment shall appear proper and adequate.¹

Agreeable to this suggestion, bills were reported in both houses providing for the creation of a board of railroad commissioners. The lower chamber was the first to act. A drastic measure, modeled on the provisions of the Georgia statute of 1879, was prepared by the committee on commerce and common carriers, and put through without much difficulty.² The senate refused its approval and passed a substitute bill of its own, wherein the authority to prescribe rates and fares was withheld from the commissioners. A conference committee was then appointed to arrange matters. As usual, the conservative opinion prevailed, and the bill, as passed, was essentially the senate's measure.³

As with the Georgia commission, the Alabama commissioners were given the power to examine the railroads of the state as often as they should deem proper; to inspect the books and papers of the companies; to issue subpoenas and to examine witnesses; and to prosecute violations of the law.

But the similarities between the two commissions were far outweighed in importance by the differences. First and foremost, the dangerous power to fix and prescribe rates and fares upon its own initiative was withheld, and in its place a novelty in southern practise appeared, comparable only to the right of "homologation" enjoyed at

¹ *Senate Journal*, 1880, p. 35.

² *House Journal*, 1880-81, p. 548.

³ *Senate Journal*, 1880-81, pp. 448, 502.

that time by the French Minister of Public Works, and in a way, also to the powers possessed by the Kansas commission. The carriers were required, upon the organization of the board and as often thereafter as might be deemed necessary, to submit their tariffs of freight and passenger charges for examination. If the commission should find any charge which, in its judgment, was more than just compensation for the service for which it was being made, or which amounted to unjust discrimination against any person or locality, it was promptly to notify the carrier at fault of the proper correction. Further, upon the receipt from shippers of complaints in writing alleging specific instances of extortion or the like, the commission was to determine at a hearing the truth or falsity of the allegation and notify the railroad, if found guilty, of any changes judged advisable.¹

No authority was given to the commission, it will be noticed, to compel the railroads to put in force the revisions of the tariffs as made by the board, nor was compulsion laid by law upon the carriers even to submit their tariffs for revision. The legislators trusted that the force of public opinion would be all-powerful in the first instance; and as for the second, they resorted to a resourceful expedient that had proved effective elsewhere. The railroads at this time, of course, were subject to constant and expensive litigation under complaints of extortion, discrimination, *etc.*, so that any device that would afford them a proper method of protection was certain to have their favorable consideration. The law provided, therefore, that all railroads submitting their tariffs for revision and acting under these tariffs as approved by the commission were to be relieved from all liability whatsoever (except, naturally, for

¹ Laws, 1880-81, pp. 87-95.

actual damage) in so far as the approval of the commission was to be *prima facie* evidence in behalf of the railroad that the tariff was not extortionate.

Theoretically, then, there was little reason why the carriers should submit their tariffs to revision at the hands of the board; but from the practical standpoint, the chances were very greatly in favor of their doing so.

Other features of the law were not so desirable. No provision was made, for example, for the presence on the commission of a man experienced in railroad matters. Indeed, the statute distinctly stated that no person in the employ of railroads or owning stocks or bonds issued by them should be eligible for the position of commissioner. And then the term of office was restricted to a paltry two years, as in the Virginia plan, so that just when the members of the board were beginning to acquire the first rudiments of knowledge in regard to their duties and to be of some value to the state, the expiration of their terms would throw them upon the governor's favor for reappointment.¹

All in all, however, the provisions of the Alabama law were a vast improvement upon those of the commissioner law of Virginia of 1877, and they were destined, as models for legislatures in other states, to have a considerable influence upon the whole course of southern experience.

The Work of the Commission

After organization the commissioners sensibly conferred with the Georgia commission for the purpose, chiefly, of acquainting themselves somewhat with the methods of practise in use by that body. Then they called upon each railroad company to furnish detailed information regarding its management, "appurtenances and equipments". Some

¹ Laws, 1880-81, pp. 87-95.

of the carriers, for the time being, denied their authority to request this information; but in the end all the roads gave way. Then, after an examination of the tariffs, the commission prepared an outline of the charges deemed proper and conferred with officials from each company in regard to these revisions. Finally followed the publication of the tariffs as revised.¹

In the work of revision the commission pursued a most interesting method of getting at the real valuation of each company. Disregarding entirely the mere cost of construction, on the grounds that most of the roads had been built when the prices of materials were much higher than in 1881, and that they were now in the hands of purchasers or lessees owning or operating them on terms far below, and little concerned with, the cost of construction, they took, as the best test available, their earning capacity. First, the net earnings were ascertained by the deduction from gross earnings of all the expenses of maintenance and operation, together with the payments for taxes. Next, a profit of eight per cent per annum was settled upon as a fair and just return; for this would pay the interest charged and leave two or three per cent for contingencies. Finally, the commission figured out the sum upon which these net earnings were eight per cent and, with a few exceptions, established this as the value of the road.² Assuming, for instance, that the net earnings of a certain carrier were one million dollars, the commission thus settled upon twelve and one-half million dollars as the fair value of the road.

A wave of protest from the railroads greeted the publication of their revised tariffs. The dissent was loudest on the part of those whose passenger fare rates had been re-

¹ *Report of Railroad Commission*, 1882, pp. 7-8.

² *Ibid.*, 1882, pp. 13, 16-17.

duced to a maximum of three cents a mile. But protest was in vain, for the commission promptly threatened to bring suit for forfeiture of charter in case of non-compliance with its rulings. The carriers, with much grumbling, then allowed the tariffs, as revised, to go into effect on the date appointed.¹

The classification in use at that time by most of the Alabama railroads was that of the Southern Railway and Steamship Association. Uniformity in classification was desirable, of course, and so the commission recommended to the other railroads the desirability of adopting the above classification. Those railroads, however, which had their own classifications preferred, in the main, not to discard them, and the consequence, for a good many years to come, was an unfortunate lack of uniformity, with its resulting hardships for both carriers and shippers.²

At the session of the legislature in 1883 an important amendment to the railroad law was adopted. It was recognized that the power of the commission in regard to rates was insufficient,—as judged, for example, by the Georgia standards; and it was accordingly made the duty of the commissioners from time to time to “carefully revise all tariffs of charges for transportation made by any person or corporation owning or operating a railroad in this state”, and to “increase or decrease any of the rates, as experience and business operations may show to be just”.³ From then on, therefore, the Alabama commission may be regarded as more mandatory than advisory in character.

¹ *Report of Railroad Commission, 1882, p. 24.*

² *Ibid.*, 1882, p. 26.

³ *Acts, 1883, p. 177.*

II. THE MANDATORY COMMISSION

In their report for 1883 the commissioners declared that the calamities which many persons had prophesied would fall upon the railroads as a result of state supervision had, in reality, not occurred, and that, on the contrary, "railroads have continued to prosper more than ever before", while "the prejudices which have existed against railroads in the popular mind . . . have largely disappeared".¹ Again, in 1888, the commissioners called attention to the large increase in railroad mileage in the state as "conclusive proof that capitalists have confidence in the future of Alabama, and that no apprehension is felt that unfriendly legislation will impair the value of their investments".²

The reports of the commission for more than two decades after its creation are full of references to the agreeableness of their official relations with the railroad companies.³ The carriers, with "apparent cheerfulness", seem to have acquiesced generally in the rulings of the commission, "even when they were not fully convinced that reductions were demanded by reason and justice". Nevertheless, during all those years the commission appealed with great earnestness to the legislature for the bestowal of greater and additional powers,⁴ for, in its opinion, there were "very great evils which the present system of state supervision does not reach in some instances, and in other instances does not adequately correct."⁵ "The railroad commission . . . needs more power than it now has to make it efficient."⁶

¹ *Report of Railroad Commission*, 1883, p. 41.

² *Ibid.*, 1888, p. 9.

³ *Ibid.*, 1885, pp. 13, 17-18; 1886, p. 24; 1904, p. 8.

⁴ *Ibid.*, 1884, p. 35; 1902, pp. 5-6.

⁵ *Ibid.*, 1884, p. 37.

⁶ *Ibid.*, 1884, p. 38.

As in the case of other southern commissions, the chief complaint was that the remedy of civil action or indictment was quite inadequate against roads that refused to comply with its rules and orders. It urged, therefore, that power be conferred upon it to proceed by injunction or mandamus. Finally, in 1903, the legislature yielded, and the recommendations of the commissioners were enacted into law.¹

On numerous occasions attempts were made in both house and senate to widen the jurisdiction of the commission, and to place under its supervision and control all the public carriers of the state.² According to the statements of Governor Comer in 1911,

the railroads kept a paid attorney in the lobby at the capitol while the legislature was in session, not for the purpose of practising law, but to revise and control all law-making. They also maintained a regular pass-giver whose business it was to environ and control as far as possible with passes and favors those who were attempting to shape the policies and politics of the state.³

The opposition was finally carried off its feet in 1907, when the nation-wide agitation of that year swept over Alabama, and the jurisdiction of the commission was so extended by the legislature as to embrace most of the public utility companies of the state.

The same legislature also passed several other laws of a decidedly restrictive nature which, in connection with the enactment enlarging its authority, involved the commission for the following six years in wearisome litigation with a number of the carriers. The measures most offensive to the railroads were those reducing passenger fares from

¹ *Report of Railroad Commission*, 1903, p. 3.

² *Ibid.*, 1907, p. 4.

³ *Senate Journal*, 1911, p. 48.

three cents a mile (a rate that competition among the principal railroads had established early in the history of the commission over most of the state) to two and one-half cents, and reducing the freight rates on one hundred and ten articles of common production and use so as to put them "on the same practical basis as has been for many years the rate on the same articles on the same class of railroads in Georgia and many other states".¹

Thereupon the leading roads of the state appeared before Judge Jones of the United States Circuit Court, sitting at Montgomery, and prayed the court to delay by injunction the operation of those statutes. The judge lent a sympathetic ear to the cry of confiscation, and granted injunctions not only against the execution of the two laws above referred to, but also against various other restrictive measures, such, for example, as the act forbidding the transferring of suits at law from state to federal courts.

From these decisions an appeal was forthwith taken to the Circuit Court of Appeals, sitting at New Orleans. That court dissolved the injunction on the ground that a fair trial of the new rates would best prove whether or not they were confiscatory. Meanwhile the majority of the roads operating in the state, headed by the Illinois Central, the Southern Railway, the Seaboard Air Line, and the Atlantic Coast Line, had resolved upon a policy of conciliation, and had settled their contentions with the state by having their cases dismissed, and by putting into effect the rates established by the legislature.² There were several roads, however, including the Louisville and Nashville, and the Central of Georgia, that were bent upon continuing the contest, and they took an appeal from the Circuit Court, accordingly, to

¹ *Senate Journal*, 1911, p. 51.

² *Ibid.*, 1911, p. 52.

the Supreme Court of the United States. The decision of that body, in line with former opinions, was to the effect that the state of Alabama is possessed both of the power, through the legislature, of making passenger and freight rates, provided that such rates were not confiscatory, and of the authority of delegating its power to the railroad commission.¹ Under the decision the contested laws were put into operation on June 1, 1909.

In its report for 1908, the Alabama commission called attention to the fact that, in the case of those railroads that had submitted to the legislative rates, the increase in passenger earnings for 1908 over 1907 had amounted, on an average, to three and one-half per cent; whereas the increase in the case of those roads that were still operating under the old three-cent rate had been but two and one-fifth per cent. This greater increase in the first group of carriers was due primarily, so the commission claimed, to the stimulating effect on travel of the lower tariff.¹

The new rates had been in force for but little over a month on the refractory roads, however, when those carriers again appeared before Judge Jones with the contention that the freight and passenger rates laid down by the state were proving confiscatory. Attorneys for the commonwealth interposed an emphatic negative. The judge thereupon appointed several masters to take evidence in the case, and to determine, if possible, the truth or falsity of the railroads' position. The taking of evidence began early in 1910 and continued, off and on, into 1912. While the Louisville and Nashville case was being thrashed out before a Master in Louisville, Ky., Judge Jones ordered the cases of the remaining roads to be taken up at other places, thus necessitating an unfortunate division of the state's attorneys. The

¹ *Report of Railroad Commission, 1908*, pp. 50, 51.

judge very probably had no intention of weakening the state's side by thus dividing the suits and compelling the simultaneous hearing of evidence at widely separated places. And yet the attorneys for the state were placed at a great disadvantage thereby, for each one was forced, usually single-handed, to face the formidable array of legal ability which the railroads were able to assemble.

In April, 1912, Judge Jones handed down his decision, holding that the railroads were justified in their contentions. An appeal was at once taken by the state.

The railroad commission then determined, upon its own motion, to put an end to the controversy. In June of the same year it cited the Louisville and Nashville and other roads to appear before it and show cause why the commission itself, through the general powers bestowed upon it by statute, should not fix a reasonable rate for passenger travel in Alabama. After an immense amount of evidence had again been taken, the commission, in February of 1913, issued an order prescribing two and one-half cents per mile as a reasonable passenger rate for all roads still operating in Alabama under the three-cent rate. The Louisville and Nashville then assailed the validity of this order in the Federal District Court at Montgomery, and succeeded in procuring a temporary restraining order. An application for an injunction, however, was denied. Pending an appeal to the United States Supreme Court from the decision denying the injunction, the railroad made application for a continuation of the restraining order. This application, also, was denied, and upon request to Justice Lamar of the Federal Supreme Court at Washington for a supersedeas, the railroad was further rebuffed. The Louisville and Nashville thereupon gave up the struggle, and by August, 1913, the two and one-half-cent rate was finally in effect upon all the Alabama roads.

CHAPTER XI

TENNESSEE

I. THE FIRST MANDATORY COMMISSION

THE first official reference to the evils connected with railway transportation in Tennessee appears to have been made by Governor Brown in his annual message of 1875 to the legislature. Alluding to the widespread and general nature of complaints of discrimination throughout the state, he laid it upon the legislators, as their duty, "to ascertain the extent of the grievances, and provide, if possible, appropriate remedies." In view of the numerous embarrassments surrounding the question he suggested that "the appointment of a select committee, with power to collect the facts, and charged with the duty of reporting a bill, by the light of these facts, might develop a plan that would correct the evils."¹ But neither house took kindly to his suggestion, and even a resolution providing for the appointment of a committee to take into consideration this portion of the message was laid over.²

The railroad question would not be downed, however, the more so since the consolidation of both parallel and end-to-end lines was going on apace in Tennessee. By 1882, for example, six railroads running into Nashville and originally built as competing lines, had become consolidated into a

¹ *Senate Appendix*, 1875, pp. 30-31.

² *Nashville Union and American*, Jan. 10, 1875.

single system that held within its grasp well nigh the entire commerce of the central part of the state.¹ Beginning with the late seventies, the democratic party incorporated each year in its platform declarations in favor of government regulation of railroads, and in 1882 the republican party followed suit.²

Early in 1883 Governor Hawkins set the ball rolling with well-chosen words of advice to the legislature, wherein he cautioned, at the same time, against hasty or ill-advised legislation.³ Both chambers agreed that under the platforms there was an obligation resting upon them to establish a commission, but they differed radically as to the character of this proposed commission. The senate adopted a bill with extremely moderate provisions; the house, on the contrary, passed a measure that was regarded by the railroads as entirely too rigorous. As usual, conservatism prevailed, and the house accepted with but few changes the moderate bill of the senate.⁴

The law, as finally approved, provided for a railroad commission of three members to be appointed by the governor with the advice and consent of the senate, and to hold office until the first of January, 1885. Their successors were to be elected by the voters of the state at the November election in 1884, and so on every two years thereafter. The powers of the commissioners were, in general, those of the Alabama commission established in 1881, namely, the powers of examination and revision of passenger and freight tariffs, and of general supervision over the railroads.⁵

¹ *Nashville American*, March 28, 1883.

² *Ibid.*, March 19, 1885.

³ *Appendix to House and Senate Journals*, 1883, p. 13.

⁴ *Senate Journal*, 1883, p. 607; *House Journal*, 1883, p. 764.

⁵ *Laws of Tennessee*, 1883, ch. cxcix, secs. xi-xxi.

Immediately upon the organization of the commission, requests were forwarded to the various railroads operating in the state to furnish, for revision, a schedule of their rates of charges for freight and passengers. With but one exception—the Nashville, Chattanooga and St. Louis Railroad—this information was sooner or later provided. Thereupon the commissioners began their work of investigation and revision, and in consultation with prominent railroad officials prepared by the end of the year a basis of freight rates for most of the Tennessee railroads. But when they proceeded in December to revise the tariffs of the Louisville and Nashville and the East Tennessee, Virginia and Georgia Railroads they met with a great deal of opposition, which culminated in February of the following year in the issuance of injunctions from the United States Circuit Court, restraining the commission in its work of revision. As soon as those two injunctions were granted, four other companies applied for and obtained restraining orders. The embarrassing position of the commissioners now became so great that they deemed it inadvisable to proceed longer with that part of their work. Their prestige, in fact, was so shattered that for the remainder of 1884 the commission law was practically a dead letter.¹

The comparatively small Democratic majority in the state elections of 1884 emboldened the Republicans in the legislature of 1885 to make an issue of the railroad situation in the hope of thereby dividing the Democratic party and of carrying the next election for themselves. Disregarding, therefore, the suggestion of Governor Bate in his annual message that the bill of 1883 be not repealed but simply purged of its defects,² they introduced a number of bills in

¹ *Report of Railroad Commission, 1883*, pp. 17-23; *ibid.*, 1884, pp. 25-29.

² *Appendix to House and Senate Journals, 1885*, pp. 15-16.

both houses looking to the overthrow of the railroad commission. With the assistance of a handful of Democrats who felt that "a law inoperative in every feature, except the single one providing for the payment of salaries", and "subversive of the public welfare in expensive and fruitless litigation", ought not to be retained on the statute books,¹ they jammed through a bill in the senate repealing the railroad commission act of 1883.² The question of repeal then came up in the house. The friends of commission regulation first offered, as a substitute, a commission bill exceedingly mild in its provisions. It did not meet the favor of the elements composing the railroad majority, however, and was promptly voted down. Then a still milder bill, aiming chiefly to meet the constitutional objections to the act of 1883, was dealt with in a similar way. In despair the regulation men finally declared their willingness to accept the repeal of the commission law, provided only that a measure should be enacted affirming the power of the state to regulate as between its citizens and the railroads, and affording some particle of relief. To this end they proposed a measure merely defining extortion and unjust discrimination and imposing a penalty for its violation. This overture, likewise, was rejected. Then the opposition collapsed, and the senate bill was carried through the house by a large majority.³

Governor Bate promptly interposed his veto on the ground that the railroad commission had been endorsed by the people in the election of 1884, and that no matter how objectionable the act of 1883 might be in some of its fea-

¹ *House Journal*, 1885, pp. 817-18; *Nashville American*, April 5, 1885.

² *Senate Journal*, 1885, p. 334.

³ *Nashville American*, 1885, March 28-29, April 4; *House Journal*, 1885, p. 666.

tures it was certainly better than no law at all.¹ In this position he was undoubtedly correct. Both house and senate, however, proceeded promptly to overrule the governor's veto, and the activities of the ill-fated railroad commission came thus abruptly to an end.²

II. THE SECOND MANDATORY COMMISSION

For a dozen years Tennessee was without a commission. Nor does there appear to have been any movement during that time for the re-establishment of the first one. Certain it is that the legislative journals are silent about this question. But in 1897, for some reason, railroad regulation came to the fore again, and of the bills that were considered at the legislative session of that year, one developed into law.³

The senate favored a weak commission, while the house held out for a board with mandatory authority; and it held out so stubbornly that the senate finally capitulated.⁴ The powers and duties of the new commission were those of the prevailing strong commissions in the United States; the language of the new statute, indeed, was very similar to that of the Mississippi law of 1884.⁵

For the first two years after organization the commissioners were so occupied with the valuation and assessment of the railroad properties of Tennessee for taxation—an extra duty imposed by the law of 1897—and with litigation over the validity of such assessment that they had no time

¹ *Senate Journal*, 1885, pp. 584-91.

² *Ibid.*, p. 591; *House Journal*, 1885, p. 816.

³ *Nashville American*, Jan. 14, Feb. 21, March 13 and 25, April 3, May 2, 1897.

⁴ *Senate Journal*, 1896, pp. 503, 607, 613, 616, 910-12; *House Journal*, 1897, pp. 239, 607.

⁵ Acts, 1897, ch. x.

to formulate and put into effect general passenger and freight tariffs.¹ The utmost that they could do was to secure and file the tariffs of the various companies, together with fiscal reports and other documents useful for future action, and to hear and determine a number of special cases.²

In the summer of 1889 the commission finally entered upon a consideration of the carriers' schedules. Conscious of its inexperience in railroad matters it proceeded with great caution and deliberation. The investigation, in fact, lasted off and on for over two years, at the end of which time the tariffs of most of the roads were approved in the form submitted to the board. The commissioners were of the opinion that the charges for transportation in Tennessee, by comparison with the charges in contiguous states, were not too high, and they were especially unwilling to draw the state into expensive litigation through any hasty action of their own.³

For nearly a decade following there appears to have been but little friction between the railroads and the commission, although, of course, there were numberless disputes between the carriers and shippers over charges on interstate freight.⁴ The source of greatest concern to the board was the discrimination in passenger charges as the result of the want of an anti-pass law. Disregarding the moral phase of the evil, the commissioners laid stress upon the higher level of charges thus made necessary and the consequent injustice to the public through the gratuitous carriage of so large a portion of Tennessee's population. The standard fare fixed by the competition of the railroads was about

¹ *Report of Railroad Commission, 1897-98*, pp. 8-9.

² *Ibid.*, 1897-98, p. 10.

³ *Ibid.*, 1899-1900, pp. 3-4, 9, 31; 1902, p. 28.

⁴ *Ibid.*, 1903-04, pp. 4, 10; 1905-06, p. 4; 1907-08, p. 3.

three cents a mile at that time. The commission hesitated to lower this level in the absence of an anti-pass law, and worked unceasingly, therefore, for the abolition of this discriminating practise,—yet without success.¹

In Tennessee, as in other states of the south, there was considerable agitation in 1907 for a reduction of passenger fares. The commission sought a conference with the trunk lines regarding this matter and secured from three of them—the Southern, the Mobile and Ohio, and the Cincinnati, New Orleans and Texas Pacific—a promise voluntarily to give to the state rates as favorable as other states might secure from them as a result of litigation. Accordingly, when the standard rate on these roads was reduced in adjoining states to two and one-half cents per mile, they kept their word and reduced their Tennessee rates to the same figure.²

Encouraged by this action, the commission issued an order early in 1908, applying the two and one-half-cent rate to all the remaining railroads operating in the state. This order seems to have been made, unfortunately, without a proper investigation. At any rate, four important companies—the Louisville and Nashville; the Nashville, Chattanooga and St. Louis; the Yazoo and Mississippi Valley; and the Illinois Central—refused to put this rate into effect. The commission then called a conference. An agreement was there entered into by which both sides agreed to await the result of the decision in the Alabama rate cases, inasmuch as the same questions were involved in both states. In the meantime the roads were to issue coupon tickets in the same manner as such tickets were being issued under the order of the court in Alabama.²

¹ *Report of Railroad Commission, 1901-02*, pp. 39, 46-50.

² *Ibid.*, 1907-08, p. 6.

The two and one-half-cent rate was found to apply with such severity to the smaller roads as to compel the board, shortly after, to exempt them from that rate.¹

Not till the spring of 1912 was a decision rendered in the Alabama rate cases, and it proved to be in favor of the railroads. The Alabama commission then promulgated an order of its own, prescribing a two-cent rate, and after a vain effort on the part of the railroads to obtain an injunction from the federal authorities, the order went into effect in the summer of 1913.²

The Tennessee commission at once conferred with the companies with which it had come to an understanding five years before. The carriers were inclined at first to stand upon the strict letter of the agreement. But when they were unable to prove to the commission's satisfaction that a two and one-half-cent rate would be so unreasonably low as to amount to confiscation and when they realized that the commission was determined to resort to litigation, if need be, to attain its purpose, they gave way.³ The Louisville and Nashville, and the Nashville, Chattanooga and St. Louis put the new rate into effect in the spring of 1914, and the Illinois Central somewhat later.⁴

Since the establishment of the commission in 1897 changes have been made from time to time in the freight classifications and schedules to secure uniformity of rates and to prevent discrimination and overcharges. The commissioners appear to have displayed a rather conciliatory attitude toward the railroads and to have met, on the whole,

¹ *Report of Railroad Commission, 1907-08*, p. 7.

² *Ibid.*, 1913-14, pp. 13-15.

³ *Report of Railroad Commission (Tenn.)*, 1913-14, pp. 15-19.

⁴ The Mobile & Ohio had meanwhile become a part of the Southern system, and automatically received the two and one-half cent rate.

with a gratifying appreciation of their efforts. Certain it is that, whatever the reason may be, there has been an unusual absence of friction for nearly two decades between commissioners and railroads in Tennessee.¹

¹ *Report of Railroad Commission*, 1907-08, p. 4; 1909-10, p. 5; 1911-12, p. 4.

CHAPTER XII

MISSISSIPPI

ALTHOUGH it is probable that the subject of railroad supervision had been brought up at various times in the legislature before the session of 1884, yet little progress had been made against the railroad interests until then. But early in that year under the influence, very likely, of the restrictive legislation shortly before enacted in Alabama and South Carolina, a bill passed both houses providing for the regulation of freight and passenger rates by a board of commissioners.¹ Governor Lowry felt obliged, however, to return it unsigned on account of the presence of several unconstitutional provisions. At the same time he urged the preparation and passage of another bill with the elimination of those defects.² Other bills were accordingly reported, modified so as to meet his objections, and referred to the appropriate committees. A substitute bill was quickly reported back, and, passing both house and senate practically unchanged, it received the governor's signature.³ This commission law was couched in language rather similar to that of the Alabama statute of 1881. Provision was made for a board of three commissioners to examine the condition of railroads from time to time, to revise their tariffs,⁴ to

¹ *House Journal*, 1884, pp. 172, 254.

² *Ibid.*, pp. 322-27; *Annual Cyclopædia*, 1884, p. 528.

³ *House Journal*, 1884, p. 517; *Natchez Democrat*, March 1, 1884.

⁴ The powers of the Mississippi commissioners in this matter were somewhat greater than those of the Alabama commission, for it was

enforce the rules regarding extortion and discrimination, and to make annual reports based upon the returns of the carriers.¹

No sooner had the commission organized than steps were taken by most of the Mississippi roads to test the constitutionality of the act creating it. Writs of injunction, restraining the board from any interference whatsoever with their business or property, and from the performance of the duties required by the statute, were applied for and secured; some in the state courts, others in the United States Circuit Court for the Southern District of Mississippi. Appeals were at once taken by the commission, in the one case to the Mississippi Supreme Court, in the other to the Supreme Court of the United States.² The state court promptly sustained both the law and the commission,³ and in 1886 the Federal court followed suit.

Meanwhile some of the smaller roads had filed their tariffs with the board in accordance with the statute. The commissioners, deeming it inexpedient, if not unjust, to restrain these railroads in their rates while the most important railroads in the state were enjoying an exemption from the operation of the law, pending the decision of the United States Supreme Court, simply decided to put off the work of revision for the time being, and therefore attached their certificate of approval to all tariffs submitted to them.⁴

made their "duty" to revise the carriers' tariffs, the tariffs as revised being binding, unless overthrown in the courts; and charges were to be prescribed for all roads neglecting or refusing to file their tariffs with the commission. See Laws of 1884, ch. xxiii. sec. vi.

¹ Laws, 1884, ch. xxiii.

² *Report of Mississippi Railroad Commission, in Department Reports for 1884-85, p. 1.*

³ *Stone vs. Yazoo R. R. Co.*, 62 Miss., 607; also 62 Miss., 646.

⁴ *Department Reports for 1884-85, p. 2.*

Prevented, then, by injunctions, from enforcing the principal features of the railroad supervision law, the commissioners for the first two years did little more than attend to trifling matters of routine.

When the new commissioners, fortified by the decision of the United States Supreme Court upholding the Mississippi law, entered upon their duties in 1886, they proceeded to more active measures. They were impressed at the outset with the importance of securing a uniform system of classification of freight for all the railroads operating in the state. At their invitation, the general freight agents of these roads convened in Jackson and put their suggestions at the disposal of the board. In the naïve language of the report,—“To the extent that they (*i. e.*, the suggestions) conformed to our views they were adopted”. But it was found impossible to bring complete order out of the existing chaos on account of the great instability and wide difference of rates prevailing. As a temporary measure, then, railroads with eastern connections were authorized to continue the use of the Southern Railway and Steamship Association classification, while a new classification was prescribed for such roads as were then using the Mississippi Valley Joint classification.¹

The question as to the revision of rates was equally perplexing. In the charters of the most important roads there were provisions establishing maximum rates to which those roads threatened to appeal in case the commission should undertake to revise their tariffs. The commission, of course, might have countered with a threat of forfeiture of charter. But not wishing to become involved in heavy litigation, as had the first commissioners, they contented themselves for the present with merely seeing to it that the rates

¹ *Report of Railroad Commission, 1887, p. 167.*

charged by those companies were not above the maximum fixed by their charters.¹

The freight tariffs of several of the other roads were reduced somewhat, for the disproportion between through and local rates in Mississippi at that time, according to the commission, was simply enormous. The aim of those reductions was to put the local rates more nearly in line with the through rates.²

Passenger rates, because of excessive competition for years past, were already exceedingly low. In fact, a rate of three cents per mile already prevailed on all of the leading railroads. The commission, therefore, readily approved the passenger tariffs of those companies and made but unimportant changes on the remaining lines.³

In 1888 the classification of the Southern Railway and Steamship Association was extended by the commission to all the roads doing business in the state, for the reason that the southern carriers in general were using that classification in connection with their interstate business.⁴

The conservative policy adopted by the commissioners in 1886 has been, in the main, steadily continued since that time, so that relations between the state and the corporations under its supervision have been much more pleasant than in the majority of the southern states. There have been numerous stretches of years during which not a single mandate of the commission has been disobeyed.⁵ Reductions from time to time have been made in freight and passenger charges, and changes effected in the classification, but al-

¹ *Report of Railroad Commission*, 1887, pp. 165-166.

² *Ibid.*, 1887, p. 168.

³ *Ibid.*, 1887, p. 167.

⁴ *Ibid.*, 1888-9, pp. 4-5.

⁵ *Ibid.*, 1891-93, p. 3; *ibid.*, 1895-97, p. 4; *ibid.*, 1909-11, p. 6.

ways, so the commission claims, with no permanent loss of revenue to the railroads.¹ As in other states, the greatest difficulties for many years arose from the commission's lack of authority to establish and enforce joint rates.²

The Mississippi commission was the first commission in the country to establish reciprocal demurrage rules. The carriers naturally contested this order, but the state Supreme Court sustained the board in this matter, and those rules have been in force ever since.

¹ *Report of Railroad Commission*, 1888-89, pp. 8-9; 1895-97, p. 4; 1899-1901, pp. 3-6.

² *Ibid.*, 1889-91, p. 6.

CHAPTER XIII

FLORIDA

I. THE FIRST MANDATORY COMMISSION

ALTHOUGH bills for the creation of a railroad commission had been introduced in the legislature from time to time before 1887, the first decisive legislative struggle in regard to this question took place in that year as a result of the declarations of Governor Perry in his annual message. "Experience in most of the states," he stated, "has demonstrated that the commissioner system is a safe one for all interests, when the commissioners are able and incorruptible, conservative and just men, though given ample powers and bound by rules having no little flexibility."¹ According to the press of that day, "a careful consideration of the subject in all its bearings" had now convinced the people that the establishment of an effective railroad commission was a matter of vital importance, and that it could no longer be postponed.² In response, then, both to the governor's suggestion and to the demand of the people, bills were speedily introduced in both chambers of the legislature, providing for the regulation of the Florida railroads and for the creation of a board of commissioners. A joint select committee, to which the majority of these bills was referred, reported out a bill modeled after the mandatory law established in Georgia in 1879. The friends of this

¹ *House Journal*, 1887, p. 22.

² *Florida Times-Union*, May 27, 1887.

measure, though proving to be in an overwhelming majority in both house and senate, nevertheless refrained from pushing it in undue haste, in order that a reasonable length of time might be secured to its opponents for investigation and discussion. In the end, after certain irregularities had been eradicated and a new bill correcting them had been framed, the commission regulation idea was adopted by the legislature, and the law went into effect early in the summer of 1887¹.

This Florida law, which was copied almost entirely from the Georgia law of eight years before, and which granted to three commissioners the authority to make "reasonable and just" rates of freight and passenger tariffs and regulations for the prevention of unjust discrimination and the like, had one very curious feature. A board of revisers was established, consisting of the comptroller, secretary of state, commissioner of agriculture, attorney-general, and treasurer, to hear any protests that the railroads might make and to "change, abrogate, revise or remodel", at their discretion, the action of the railroad commissioners.² This was an unwise provision, of course, for the members of this board were already so taken up with their own official business as to have no time left for the proper consideration of whatever matters might come before them in their new capacity.

The choice of the governor fell upon three men who, though wanting in practical experience in railroad management, were nevertheless gentlemen of the highest qualities, and in no sense aspirants for political preferment. To Judge McWhorter, indeed, had been awarded the highest judicial honors in the gift of his state, and no man stood

¹ *Senate Journal*, 1887, pp. 497, 623; *House Journal*, 1887, pp. 224-5, 492, 712, 720, 920.

² Laws of 1887, ch. mmmddccxlvii, secs. i-xvii.

higher in the confidence of the people. His wealth and position were such as to preclude the inducement of the salary connected with the office. Judge Vann and Mr. Himes were likewise well-known throughout Florida and highly esteemed for their sound common sense.¹

After organization, the commission issued a notice to the railroads of the state and to the public generally of a meeting to be held in September at Tallahassee for the purpose of fixing rates for the transportation of freight and passengers, and for the making of the necessary regulations prescribed by the statute. The railroads were ordered to furnish, in addition to their freight and passenger tariffs, copies of their latest annual reports and detailed statements of their net earnings and operating expenses since January 1st, 1887.² At this meeting the railroad managers declared with one voice that it was the plain duty of the commission to legalize and adopt the tariffs and schedules then in force, and they insisted that their charges were perfectly just and reasonable. The commissioners soon found upon investigation, however, that the rates charged, even where conditions were not greatly dissimilar, showed wide differences, and, further, that the ratios of increase in freight charges, according to distance, were most irregular among the various railroads.³

The commission was persuaded that the passenger rates were, on the whole, too high, and accordingly, the standard passenger tariff was fixed at three cents a mile, and made to apply to a majority of the railroad mileage in the state.⁴

The work of drawing up a satisfactory schedule of

¹ *Florida Times-Union*, Aug. 4, 1887.

² *Report of Railroad Commission, 1887-88*, pp. 4, 14.

³ *Ibid.*, 1887-88, pp. 14-15.

⁴ *Ibid.*, pp. 12, 20.

charges for the transportation of freight proved much more difficult. There was, first of all, the question of classification, since the adoption of a uniform classification was absolutely necessary for the proper and intelligent making and prescribing of freight rates and schedules. Most of the roads were found to be using the Southern Railway and Steamship Association classification of April 1, 1887, and after examination this classification was in the main adopted.¹ Then there was the still more difficult question as to what were, anyway, reasonable charges for the transportation of articles of freight. The commissioners were not long in discovering, however, that the average earning capacity of the Florida railroads was remarkably low, because of the facts that the total traffic was as yet comparatively small on account of the sparseness of the population, and that wherever the tonnage was greatest it was largely competitive between the railroads and the boats plying the St. Johns river. The commission therefore contented itself with righting some of the irregularities and with wiping out the most grievous of the prevailing discriminations.² The standard freight tariff was completed and published in October.

Protests were speedily presented to the commission by most of the railroads, and thence to the board of revisers; but the board sustained the commission on all the important points. The roads might then have appealed to the courts for relief. A majority of them, however, gracefully announced their decision to comply with the regulations of the law, and thus victory rested with the commissioners.³

The remainder of the life of this commission was com-

¹ *Report of Railroad Commission, 1887-88*, p. 7.

² *Ibid.*, 1887-1888, pp. 20-21.

³ *Ibid.*, 1887-88, p. 24.

paratively peaceful. The railroads were dealt with in a fair and able manner that rendered discord impossible. When the commissioners, for example, discovered in 1889 from the reports of the railroad companies that the three-cent passenger rate on the trunk lines was proving unremunerative, they promptly raised it to four cents.¹

Right in the midst of its greatest usefulness the life of the commission was suddenly cut short. Judge McWhorter unfortunately resigned early in 1891, and to fill the vacancy the governor appointed a gentleman who, in the opinion of the "Times-Union", was "especially distasteful to a large majority of the people. When it became almost conclusive that they must have him on the commission or have no commission at all, they cried aloud for the latter." At any rate a bill calling for the repeal of the act of 1887 was rushed through the legislature, and in the summer of 1891 there came to an end one of the most intelligent railroad commissions that had yet come into existence in the United States.²

II. THE SECOND MANDATORY COMMISSION

For six years Florida remained without a board of commissioners. Then, all of a sudden, a demand for its re-establishment swept over both houses of the legislature, and bills were rapidly pushed through, first in the senate and then in the house.³ The committee in the lower chamber, to which the senate bill was referred, recommended its passage, and it was accordingly taken up as a substitute for the house measure and quickly passed.

This law of 1897 was virtually but a reënactment of the statute of ten years before. The chief difference had to do

¹ *Report of Railroad Commission, 1888-89*, p. 13.

² *Florida Times-Union*, May 19 and June 6, 1891; *Laws of Florida, 1891*, pp. 109-10.

³ *Ibid.*, April 25 and 29, 1897.

with the commissioners themselves. They were now to be elected by the people, instead of appointed by the governor,¹ and the provision was inserted that one should be a lawyer, another a railroad man of experience, and the third engaged in agricultural pursuits. The board of revisers feature was dropped, the carriers being given the right of appeal to the courts. Finally, to the commission was now given the important power of prescribing joint rates.²

The law as thus passed was undoubtedly of a very drastic nature, and many were the fears of the press and of railroad journals for the future welfare of the state. The *Railway Age*, for instance, was very severe in its condemnation, declaring that "the state of Florida has served notice on the world that it desires no more money invested in railroad building. . . . We can cheerfully promise that she shall have none."³ At the outset, however, the advantage rested with the commission, for the first members of the board were of a conservative disposition, and were held in the highest respect by all the parties at interest.⁴

The first few months after organization were devoted to a study of the rates and fares and classifications in use upon the various railroads operating in Florida. The commission wisely determined to go slowly at first. The Southern Classification at that time in use upon those roads was adopted as the official classification, to be modified, of course, from time to time, by the published exceptions of the board.⁵ In the schedule of freight rates promulgated, only a few changes in the rates then in force were made, the

¹ Pending the general election of 1898 the first commissioners were to be appointed by the governor.

² Laws, 1897, pp. 82-94.

³ *Railroad Age*, May 4, 1897.

⁴ *Florida Times-Union*, May 20, 1897.

⁵ *Report of Railroad Commission*, 1900-01, p. 13.

main reductions applying to the rates on vegetables, oranges and lemons. Two important innovations, however, were introduced. The straight mileage basis was adopted "as being the fairest manner of computing charges for the transportation of freight", and the roads were required to discontinue the practise of charging the sums of local rates, in favor of a charge of one joint rate,¹ thereby effecting a considerable saving to shippers. The passenger rates were regarded as comparatively reasonable and just, and they were therefore disturbed in but a few particulars. Although the rate in force upon the trunk lines was four cents a mile, there were certain privileges extended by the railroads,—such as the issue of mileage books at two and one-half cents per mile,—that reduced this charge rather markedly. Both railroads and commissions agreed that passenger rates should continue, virtually, as then effective.²

Early in 1898 the mileage books were withdrawn by the carriers. Regarding this as a breach of faith and as an unjust increase in rates, the commission reduced the fare on the trunk lines from four cents to three cents per mile. Many of the roads paid no attention to this order and continued to apply their old rates.³ Upon the advice of the attorney-general to the effect that certain defects existed in the law of 1897 which would make it inadvisable to enforce this order through the courts, the board contented itself with requesting, through the press, all persons overcharged to file their claims for such overcharges. All such claims filed with the commission were subsequently recovered.⁴

When the legislature of 1899 convened, a special committee was appointed, both to draft the amendments requested by the board and to clothe it with the added judicial

¹ *Report of Railroad Commission, 1897-98*, pp. 5, 10, 12.

² *Ibid.*, 1898-99, p. 7.

³ *Ibid.*, 1898-99, pp. 8, 31.

⁴ *Ibid.*, 1899-1900, pp. 10-12.

powers conferred by the amendment to the Florida constitution ratified in 1898. These provisions were enacted into law during the session, and greatly strengthened the commission (as was soon proved) by more clearly defining its scope and powers.¹

Immediately after this action by the legislature the commissioners ordered two of the offending railroads to put on sale limited round-trip tickets at a rate of three cents per mile. Upon their refusal to do so writs of mandamus were issued, to which the companies filed petitions for the removal of the proceedings to the federal court. The circuit judge denied these petitions. The companies, on various grounds, then moved to quash the writs.²

Meanwhile a case as to the commission's judicial powers had arisen and had gone by appeal to the Supreme Court of the state. On January 8, 1900, the decision of that court was handed down, expressly affirming the validity of the act of 1899 and sustaining the authority of the commission to enforce its orders by mandamus. The defendant companies then withdrew their motions to quash, and agreed not only to comply with the commission's order, but to put on sale mileage books at a three-cent rate, and to pay all the claims for overcharges then filed. Shortly afterwards the remaining important Florida railroads were required, also, to issue round-trip tickets and mileage books at a three-cent rate.³ Thus was the authority of the board finally established, as contemplated by the laws of 1897 and 1899.

The necessity of a fixed and stable freight classification for the state was brought home by the action of the Florida roads late in 1899. Upon the issue of Southern Classifica-

¹ *Report of Railroad Commission, 1899-1900*, p. 3; *Laws, 1899*, ch. mmmmdcc.

² *Report of Railroad Commission, 1899-1900*, pp. 13-14.

³ *Ibid.*, 1899-1900, p. 15; *ibid.*, 1900-01, p. 6.

tion No. 26 they promptly withdrew the classification approved by the commission two years before and proceeded to apply the rates of the new one. Examination having revealed to the commissioners a large increase in rates in No. 26 over No. 25, they promptly declared the old classification to be still in force, and summoned the carriers before them. The latter sought to excuse themselves by alleging that they were under the impression that the board had agreed, in 1897, to adopt not only Southern Classification No. 25, but also all subsequent and superseding classifications. Convinced more than ever, by this argument, of the desirability of a fixed classification, the commission spent the following six months in a careful study of the whole matter, including a consideration of the railroad's objection to each item, and promulgated its official classification in the spring of 1901—its most important and valuable work since its organization.¹

For a couple of years affairs ran along rather smoothly. Then in 1903 trouble developed with one of the important carriers. The Louisville and Nashville Railroad was ordered to reduce the maximum passenger fare on one of its divisions from four to three cents a mile. The road refused, alleging that it was actually conducting its Florida business at a loss, and upon this ground secured an injunction from the United States Circuit Court.² The commission had no way of impeaching the elaborate and complicated statement prepared by the railroad, for there was no appropriation sufficient to cover the expensive task of investigating the books and papers of this large corporation. All the more impressed with the necessity for a thorough knowledge of the accounts of the railroad companies of the

¹ *Report of Railroad Commission, 1900-01*, pp. 13-14, 16.

² *Ibid.*, 1904-05, p. 30; *ibid.*, 1905-06, p. 9; *ibid.*, 1908-09, p. 14.

state, the commissioners redoubled their efforts to obtain an extra appropriation from the legislature. Not until the session of 1907 were they successful, when an appropriation of \$10,000 annually was granted them.¹

The commission was now prepared to combat properly the injunction obtained by the Louisville and Nashville Railroad four years previously. Early in 1908 the company was ordered to produce all the books and papers relating to its Florida business since 1897 at its office in Pensacola for investigation and examination. The road at first refused, but after having been threatened with mandamus proceedings, it gave way and granted the board complete access to its books and papers at Pensacola, Louisville, and elsewhere. After this investigation and the taking of testimony had been practically completed, and a very favorable showing in support of the reasonableness of the order of 1903 had been made, the Louisville and Nashville deemed it time to yield its ground. A proposition was accordingly made to the commissioners to the effect that the company would put the three-cent rate into operation at once if they would assume their part of the cost of litigation up to date. This offer was accepted, and the injunction of over five years' standing was thereupon dissolved.²

The work of auditing the accounts of the Florida carriers is proceeding slowly, hampered as it is by want of special appropriations. The reports of the auditors, ever becoming more comprehensive, will form in time a permanent basis for dealing with the railroads, enabling the commission to avoid litigation in the future, to a great extent, through exact knowledge of their ability to surmount reductions in charges. Only too often at present are the

¹ *Report of Railroad Commission, 1908-09*, p. 13.

² *Ibid.*, 1911-12, p. 21.

commissioners, like those of other southern states, obliged to act in the dark from mere inability to get at the necessary information.

Like South Carolina, Florida was almost entirely untouched by the tide of litigation that swept over most of the South from 1907 on in connection with the dispute over passenger fares. Amicable arrangements were effected through conferences whereby the leading roads, headed by the Atlantic Coast Line and the Seaboard Air Line, voluntarily reduced their rates from three to two and three-fourths cents a mile on their main lines and placed mileage books on sale at two cents a mile.¹ These rates are still in effect.

Freight rates in Florida are probably higher, on the average, than those in any other southern state. But there are important considerations to be kept in mind. The density of traffic per mile of road, for instance, is much less than in any of the neighboring states; and then Florida is a "terminal" state, in the sense that interstate shipments have either their origin or destination within the state (disregarding the slight amount of Cuban traffic). There is thus comparatively little through traffic upon which the roads may depend, and so the charges for local business are correspondingly higher.²

With the notable exception of the Florida East Coast Railway, relations between the railroads and the commissioners for the past five years have been very harmonious. Most matters in dispute are readily settled by correspondence or by informal conferences. In the few cases where formal action has been necessary the orders of the commission have been quite generally obeyed without the necessity of a resort to the courts or to legislation.³

¹ *Report of Railroad Commission*, 1908-09, pp. 9-10.

² *Ibid.*, 1914-15, pp. 24-25.

³ *Ibid.*, 1914-15, p. 32.

CHAPTER XIV

NORTH CAROLINA

I. THE FIGHT FOR A COMMISSION

At the time when the granger agitation was having, as one of its results, the establishment of railroad commissions in different parts of the United States it was inevitable that the attention of the North Carolina legislators should be directed to the question of government regulation of railways through state commissions. The first bill looking toward the establishment of a commission appears to have been introduced by Mr. Dortch of the senate late in February, 1879.¹ The senate committee on internal improvements, to which the bill was referred, did not approve, however, of the mandatory character of its provisions and reported back a substitute measure of its own, quite harmless in its nature. A warm discussion followed, at the end of which the substitute bill passed the third reading by a narrow margin.² The house then considered the bill in some detail, and had not the congested condition of the calendar prevented its coming to a third reading it might very easily have become a law.³ Thus ended the first important conflict in the legislature.

At the next session another railroad commission bill

¹ *Senate Journal*, 1879, p. 491.

² *Ibid.*, p. 605.

³ *House Journal*, 1879, p. 805.

was introduced, and again in the senate, but it died in committee.¹

With the session of 1883 the struggle was renewed. Governor Jarvis, in his message to the legislature, referred very tactfully to former attempts in the state to adjust the conflict between the railroad companies and the people, and gave it as his opinion that the wisest thing to do would be to create a railroad commissioner endowed with advisory and supervisory powers.² The response was gratifying. Three bills were shortly introduced in the senate, and one bill somewhat later in the house. The three senate bills, on the recommendation of the judiciary committee, were referred by the senate to a joint select committee. The outcome of their deliberation was a substitute bill which met with so little favor from the senators as to lead to its speedy withdrawal from discussion.³ Then the house bill, which had progressed by easy stages to a successful third reading, came up for debate in the senate and was there so plastered with amendments that the two houses were unable to come to any agreement.⁴

Two years later Governor Jarvis again called the attention of the legislature to the advisability of creating some sort of officer to be "charged with the duty of investigating all complaints and reporting them to the General Assembly".⁵ Bills were accordingly introduced, but the committee reports were unfavorable, and there the matter rested.⁶

¹ *Senate Journal*, 1881, p. 520.

² *Legislative Documents*, 1883, p. 10.

³ *Senate Journal*, 1883, pp. 92, 254, 401.

⁴ *House Journal*, 1883, p. 843.

⁵ *Legislative Documents*, 1885, p. 18.

⁶ *Senate Journal*, 1885, pp. 221, 229.

Further attempts were made in the session of 1887 to secure the establishment of a commission, and again they came to naught.¹ Mr. Ewart, vigorous champion for many years of the commission idea, introduced the remarkable proposal to submit the question of a railroad commission to the voters of the state, but it died, like so many previous proposals, in committee.²

The campaign for a railroad commission opened in 1889 with a volley of recommendations from Governor Scales to the legislature. Appropriate legislation for the securing of reasonable rates, for the prevention of rebates, discriminations and pooling, and for the insuring of publicity of all rates was strongly counseled. Then he added: "I would also recommend a commission of three wise, patriotic, and unprejudiced men, with salaries sufficient to render them independent, and enable them to give their whole time to the work." Further, since in his opinion it would be "exceedingly difficult so to frame a bill as to meet every case, without unduly interfering with, if not crippling, the railroads", he advised that "power be given to the commission to consider and adjust all questions of freight and fares, as well as all other controverted questions which may arise between the different railroads themselves, or between the railroads and the citizens".³ In response to this appeal no less than five bills were introduced, four of them in the house. The railroad interests, however, were now thoroughly aroused, and although a bill for the regulation of railroads in North Carolina succeeded in passing the house, they were powerful enough to prevent its consideration in the senate.⁴

¹ *Senate Journal*, 1887, p. 571; *House Journal*, 1887, pp. 308, 370.

² *Ibid.*, 1887, p. 345.

³ *Public Documents*, 1889, pp. 19-20.

⁴ *Senate Journal*, 1889, p. 542; *House Journal*, 1889, pp. 420, 541.

In his annual message two years later Governor Fowler repeated the recommendations of his predecessor, saying that the time had now come when some step should be taken. "Every state in the Union, except ten," he remarked, "has appointed commissioners and enacted laws to regulate the carrying trade of the railroads in the borders of the different states."¹ As before, numerous bills were introduced, one of which even looked to the supervision of steamboat, canal, express and telegraph companies in addition to railroads. This bill found special favor with the select committee on a railroad commission, and its main ideas were incorporated in a substitute bill reported in the senate. During the course of the discussion it was soon realized that the tide had turned and that North Carolina was finally to have some sort of commission to deal with the railroad question. Upon the passage of its third reading² the house took it up, and sent it back with amendments. Then followed the deliberations of a conference committee, in which differences were patched up, and the fruit of which was a measure acceptable to both houses, providing for the first commission yet to be created in the South with authority over corporations other than railroads.³

The statute followed the Georgia law of 1879 in general outline. But there were several important differences, not all of them to be regarded as improvements. The commissioners, instead of being appointed by the governor, were to be elected by the general assembly; and no one having any interest in a railroad was to be eligible for the position. In addition to fixing reasonable and just

¹ *Public Documents*, 1891, pp. 34-35.

² *Senate Journal*, 1891, pp. 132, 270, 317.

³ *Senate Journal*, 1891, pp. 321, 376, 548, 797, 813; *House Journal*, p. 726.

rates and regulations, the board was further to prescribe joint through rates—thus determining at the outset a question that was proving of more and more difficulty in neighboring states. The commission's schedules, however, were made only *prima facie* evidence of reasonableness, so that the companies were to have the right of appeal from its decisions first to the superior courts and thence to the state supreme court. All laws were repealed by which the railroads were permitted to charge rates other than those that might be prescribed by the commissioners. Finally, it was made their duty to investigate complaints regarding interstate, as well as intrastate, rates of freight, and to bring them to the attention of the Interstate Commerce Commission for consideration before that body.¹

II. THE RAILROAD COMMISSION

The choice of the legislature fell upon three men of excellent reputation. Major Wilson was a gentleman of large experience in railroad matters; Mr. Mason, a farmer and lawyer of ability; and Mr. Beddingfield, a former member of the legislature and active in the work of the Farmers' Alliance.²

Previous to organization, Chairman Wilson paid a visit to the Georgia commissioners, making a study of their rules and procedure and of the workings of the law in that state, inasmuch as the laws of the two states were very similar in many respects. Upon his return the board made a careful study of the rates and classifications prevailing in North Carolina. A standard classification for the whole state was presently promulgated, and there followed reductions in freight charges for all roads that were making actual ex-

¹ Laws of N. C., 1891, ch. xxx.

² *Raleigh News and Observer*, March 5, 1891.

penses. The commissioners were able to announce within a few months that the standard freight rates put into effect by them were as low as, and in many cases lower than, the rates in any other southern state.¹

Passenger rates were likewise reduced and the standard tariff was fixed at three and one-fourth cents a mile, applying to a great part of the mileage in the state.²

The commission appears to have gone about its work very tactfully, for the carriers did not take a single appeal from its rulings. In fact, relations between the board and the railroads were, for a number of years following, very harmonious, all complaints being adjusted to the satisfaction of both complainants and corporations.³ The only conflict in the history of the commission came in 1898 as the result of an order reducing passenger rates, first class, on the Wilmington and Weldon Railroad from three and one-fourth to two and one-half cents a mile. The board had had a general reduction in passenger rates on the various railroads under consideration for a long time, and it determined, at length, to introduce the reduction first of all upon the above line, as being the most able to stand it.⁴ The railroad naturally appealed against this somewhat premature action. The case was finally settled in the federal courts in favor of the commission.

In 1898 an ugly row developed in consequence of the action of Governor Russell in suspending two of the commissioners—Chairman Wilson and a relative of the same name—from office. The governor instituted proceedings in a letter to the chairman in which he made certain allegations as to Major Wilson's connection with the Southern

¹ *Report of Railroad Commission*, 1891, pp. 3-4, 50.

² *Ibid.*, 1891, p. 37.

³ *Ibid.*, p. 3.

⁴ *Ibid.*, 1898, p. 4.

Railway, and required him to show cause why he should not be removed from his position. In his answer the chairman denied both the allegations and the authority of the governor to suspend him. Governor Russell, however, was convinced after investigation that Major Wilson had disqualified himself, and he therefore suspended him, appointing Mr. Caldwell in his place. This order being disregarded, Mr. Caldwell brought an action to obtain the office. Mr. Wilson set up two defenses in his answer: first, that, even conceding the power of the governor to remove him, he had attempted to exercise it in an unlawful manner, in that he had denied the defendant the fair hearing to which he was entitled by law; and second, that "the part of the railroad commission act of 1891 authorizing such suspension was unconstitutional, inasmuch as it interfered with the independent tenure of a judicial officer, and deprived him of his property in said office without due process of law", thus violating the fourteenth amendment to the United States Constitution. These contentions were nevertheless disallowed by the Superior Court. Appeal was then taken to the state Supreme Court, which held that the railroad commission was not a judicial, but rather an administrative body, and that the court had no authority to review the exercise of the power of suspension when used in an orderly manner. Thus unfortunately there were lost to the commission the services of one of the most distinguished and reputable men in North Carolina.¹

III. THE CORPORATION COMMISSION

At the session of the legislature in 1899 a bill was favorably acted upon which transformed the railroad commission into the first corporation commission created in the United

¹ *Report of Railroad Commission, 1897*, pp. xxxv-xxxvi.

States. The powers and duties of the old commission were transferred virtually unchanged to the new board, but its jurisdiction was vastly extended to cover every sort of company or corporation engaged in the carrying of freight or passengers in North Carolina, as well as telephone companies, public and private banks, loan and trust companies, and building and loan associations.¹

The three gentlemen selected as the first commissioners were all of a high order of capacity: Mr. McNeill, an able and well-informed lawyer; Mr. Beddingfield, who had served for six years on the railroad commission; and Mr. Rogers, a former collector of internal revenue and a business man of ability.²

For nearly a decade after the enactment of the law of 1899 the course of the corporation commission proved comparatively smooth. Very few of its orders were disobeyed and in but one suit was its position not sustained.³

Freight classification No. 25 of the Southern Tariff Association, adopted in 1898 by the old commission, was continued in force by the new board.⁴ The most important work was the application, in 1902, of the standard passenger fare rate of three and one-fourth cents, first-class, to almost every road in the state not yet operating under that rate.⁵ North Carolina was at that time the only state in the Union requiring the furnishing, by the railroads, of both first and second-class service for passengers. The commissioners believed from the outset that a lower rate could be maintained with one class of service than with two

¹ Laws, 1899, ch. clxiv.

² *Raleigh News and Observer*, March 5, 1899.

³ *Report of Corporation Commission*, 1903, pp. 3-4; 1907, p. 6.

⁴ *Ibid.*, 1900, p. 4.

⁵ *Report of Corporation Commission*, p. 3.

classes, and they embodied this view from time to time in their annual reports. In 1905 Governor Aycock referred this recommendation to the legislature,¹ but nothing came of the bills that were introduced because of the failure of the legislators to agree upon a rate for the one class service.²

In his message to the legislature in 1907 Governor Glenn proposed a flat rate of two and one-half cents per mile for passenger travel (the corporation commission having favored a reduction to three cents only³) and the issue of mileage books by the railroads at two cents a mile.⁴ The two houses could not agree over this recommendation, and a conference committee was appointed. The report of the committee favored the exceedingly low rate of two and one-fourth cents per mile. It was nevertheless ratified, and the new rate was ordered to go into effect on July 1st.⁵

Governor Glenn then endeavored to induce the railroads to give the new rate a fair trial, arguing that the probable increase in travel resulting from the low rate might well make it remunerative. Some of the carriers accepted this proposal.⁶ Others, however, rejected it and, headed by the Southern Railway, applied for, and obtained injunctions from a United States Circuit Court forbidding the corporation commission and the state attorney-general from putting the law into effect.

The first of July came on, and these roads continued to sell tickets at the old rate of three and one-fourth cents. Governor Glenn, determined to uphold the law and to make

¹ *Public Documents*, 1905, p. 5.

² *Report of Corporation Commission*, 1906, p. 11.

³ *Ibid.*, 1904, p. 8.

⁴ *Public Documents*, 1907, pp. 10-11.

⁵ *Laws*, 1907, ch. ccxvi.

⁶ *Public Documents*, 1909, p. 4.

these roads recognize that the laws of the state were to be obeyed until declared unconstitutional by a competent court, addressed a letter to each of the state judges in which he requested them to charge the grand juries to bring in indictments against the offending carriers for their open defiance of the law.

A number of railroad agents were thereupon indicted, convicted and sentenced. Then the United States Circuit Court which had granted the injunctions came to their rescue, and by the writ of habeas corpus discharged them from the custody of the state's officers.¹ The state at once appealed to the Eleventh Amendment of the Federal Constitution, contending that it could not be sued in a United States Court without its consent and that it never had consented to be thus sued in the matter.² Never before had "so sharp a conflict between the state and the United States courts been presented". The governor was resolved upon enforcing the law, even though it took "every dollar in the treasury and put arms in the hands of every available man in the state". Fortunately, cool heads prevailed upon both sides. An agreement was entered into by which the railroads were to obey the new rate law, pending the determination of its constitutionality in the courts.³ But the financial crisis in New York that soon followed made a speedy adjustment of the situation imperative.

The governor again interfered and proposed, in brief, that the intrastate rate be raised to two and one-half cents a mile, on the condition that the railroads lower their interstate rate of three cents a mile to two and one-half cents; that mileage books be issued at two cents a mile; and that

¹ *Public Documents*, 1909, pp. 4-5; *Biennial Message*, 1909, pp. 6-7.

² *South Atlantic Quarterly*, Bound Volume, 1907, p. 346.

³ *Public Documents*, 1909, p. 5.

the corporation commission be given the power, after the rate had been in operation a reasonable length of time, to prescribe such changes—subject, of course, to appeal—as would make it reasonable and just. This compromise was accepted, substantially, by the roads, and was ratified by the legislature in extra session.¹

IV. THE VIRGINIA-NORTH CAROLINA CITIES CONTROVERSY

For the past seven years or more the main attention of the corporation commission has been devoted to an endeavor to adjust the complicated situation that has existed for several decades as a result of disputes between Virginia cities, on the one hand, and North Carolina cities, on the other. The history of this controversy will be dealt with elsewhere at some length. In this connection the barest outline must suffice.

Shortly after 1873 the Chesapeake and Ohio, stretching westward from Newport News, Va.—just opposite Norfolk—by way of Richmond and Clifton Forge, reached the Ohio river at Cincinnati. In the determination to secure a portion of the western business then moving over northern railroads to the Atlantic seaboard, it offered to carry through freight to Richmond and Norfolk at a rate as low as that for which such freight was being carried from the west over other railroads to Baltimore. From then on, the Baltimore rate became, in the main, the basis for the Richmond and Norfolk rates. And when the Chesapeake and Ohio acquired, in 1886, a line of railway leading from Clifton Forge to Richmond by way of Lynchburg—a junction point of three important railroads—it was compelled to give this latter city a through rate as low as the Richmond and Norfolk rate.

When the Norfolk and Western Railway came into the

¹ *Public Documents*, 1909, p. 6; *Biennial Message*, 1909, p. 7.

field and began to compete for the western traffic it was forced, naturally, to adopt the through rates of the Chesapeake and Ohio, for had it sought to charge higher rates it would have secured little, if any, of the tonnage moving east. In 1887, in conformity with the provisions of the long and short haul clause of the Interstate Commerce act, both of these roads so corrected their schedules of freight charges as to give to all intermediate points on their main lines rates no higher than the through rates in force between Cincinnati and Norfolk.¹ Later on the Southern Railway, and to a lesser extent, the Seaboard and the Atlantic Coast Line began to compete with the Chesapeake and Ohio and the Norfolk and Western for the east-bound traffic, and they simply met at Lynchburg, Richmond, Norfolk and elsewhere in Virginia, the through rates in force. To offset their low rates to Virginia cities, the three southern roads mentioned above maintained, and at times even increased, their interstate rates to North Carolina points, water competition there being of little or no moment. Freight was accordingly hauled across North Carolina northward to Virginia cities for a less amount than to North Carolina cities; and a like disproportion obtained, in many cases, in the rates on freight originating in North Carolina. As a consequence the jobbers and wholesale merchants in Virginia were enabled to undersell those in North Carolina and to build up the commerce of their state at the expense of their less favored neighbors.²

The dissatisfaction in North Carolina resulted, from time to time, in vigorous protests to the Interstate Commerce Commission. In 1899, for instance, the Wilmington Chamber of Commerce and, a few years later, the Charlotte

¹ *Interstate Commerce Commission Reports*, vol. viii, p. 422.

² *Public Documents*, 1909, p. 10.

Board of Trade brought proceedings before that body. While the discriminations alleged were clearly established, the Commission yet declared itself powerless to afford the proper relief because of the dissimilarity of conditions in the two states.¹

In 1908 the North Carolina commission decided to take a hand in the matter, authorized by law as it had been recently to bring proceedings before the Interstate Commerce Commission for the correction of discriminations in interstate rates. Investigations having substantiated the truth of numerous complaints, it was decided to bring a test suit as a basis upon which, if successful, other suits of a more comprehensive nature could be founded. Proceedings were accordingly instituted at Washington against the Norfolk and Western for discriminations in favor of Roanoke and Lynchburg, Va., as opposed to Durham and Winston-Salem, N. C.—all four cities being on its own line. The testimony showed, for example, that the above road was exacting a charge of twenty-nine cents per hundred pounds for the transport of grain from Cincinnati to Durham in comparison with a charge of but thirteen cents to Roanoke and other Virginia cities, with an almost negligible difference as to distance. Other discriminations equally glaring were brought to light.²

The litigation terminated in favor of the corporation commission, though the reductions made were much less than had been hoped for, and the order was affirmed, on appeal, by the United States Commerce Court.³ A precedent having now been established, three more suits were filed, late in 1912, with the Interstate Commerce Commis-

¹ *Report of Corporation Commission*, 1908, pp. 5-6.

² *Ibid.*, 1908, pp. 6-7.

³ *Ibid.*, 1910, p. 7; 1912, pp. 3-4.

sion, complaining of rates from the north and east as well as from the west. Shortly afterwards, however, the chairman of the corporation commission, persuaded of the desirability of securing an adjustment by informal conferences between the carriers and representatives of the state rather than by litigation, suggested the propriety of such a course to some of the railroad officials. The roads endorsed the idea, and the result was an extended series of negotiations between the commission and the governor, on the one side, and railroad presidents and traffic managers, on the other. Progress was slow but sure. In the end the railroads yielded on most of the points brought up by the commission, and an agreement was entered into by which comprehensive reductions, applying to all of the United States except the territory east and northeast of Pennsylvania, were made in the rates then in force.¹ All parts of North Carolina were not equally benefited, it is true, for the railroads positively refused to make reductions to certain points, like Wilmington, on the ground that the rates to those places, whether from water competition or otherwise, were already exceptionally low. The suits filed in Washington against the carriers were of course withdrawn.

This adjustment was submitted to the North Carolina legislature at a special session, was there approved, was sustained upon attack before the Interstate Commerce Commission, and went into effect on June 23, 1914.² Considering the magnitude of the whole matter and the quickness and inexpensiveness with which it was settled, this achievement may fairly be ranked ahead of any undertaking whatsoever that up to this time has been carried out by any one of the southern commissions.

¹ *Report of Corporation Commission*, 1912, p. 4; 1913, pp. 5-7, 35, 38, 39.

² *Ibid.*, 1913, p. 38; 1914, p. 4.

In the autumn of 1914 the controversy was re-opened before the Interstate Commerce Commission on behalf of certain Virginia cities; but it is too early, at this writing, to prophesy the outcome. The final argument is to take place before the Commission at Washington on December 17, 1915.

At the same special session of the legislature where the corporation commission's adjustment was agreed to, an act, patterned after a recent Minnesota statute, was passed providing for the creation of a special commission to investigate the reasonableness of the intrastate freight rates in force in North Carolina, and to prescribe such changes therein as might seem desirable. Judge Justice, father of the author of this law, was named by the governor as chairman.¹

Hearings and sessions were held during the winter, spring and summer of 1914 and the testimony of the principal carriers, of boards of trade, of industrial associations, and of individuals was taken in great detail. Then, in accordance with further provisions of the act of 1913 authorizing its appointment, the special commission completely revised the intrastate freight rates of the eight railway systems of North Carolina of more than seventy-five miles each in length, and adopted the Southern Classification as the official classification of the state.² The shorter lines are so numerous and their freight rates so divergent, that the legislature had deemed it best to continue control over their freight rates in the corporation commission.

The rates and classification fixed by the special commission went into effect in October, 1914.³ A storm of protest

¹ Public Laws, 1913, Extra Session, ch. xx.

² *Report of Corporation Commission*, 1914, p. 66.

³ *Ibid.*, 1914, p. 4.

at once arose from the carriers, large and small. The principal roads promptly filed tariffs discontinuing many of their intrastate commodity rates (which the corporation commission, however, refused to allow to go into effect),¹ while the shorter lines soon discovered that the rigidity of the long and short haul clause of the act was depriving them of a large part of the state traffic formerly handled by them. The disturbances were so serious that the corporation commission deemed it inopportune to set about the prescribing of standard rate scales for these railroads, and is therefore awaiting the determination of the legislature before taking further action in this important matter.²

¹ *Railroad Age Gazette*, Oct. 23, 1914.

² *Report of Corporation Commission*, 1914, p. 4.

CHAPTER XV

LOUISIANA

THE railroad commission of Louisiana came into existence through provisions in the state constitution of 1898. Jurisdiction was conferred over railroad, sleeping-car, express, telegraph and telephone companies, and over steamboats and other water craft. The customary duty was laid upon the commissioners (to be elected by the people, each for a term of six years) of adopting, changing, or prescribing reasonable and just rates, and of preventing unjust discrimination and extortion.¹

At the time when this commission was created there were very few commissions in the United States with jurisdiction over water craft. The question of water competition, however, was probably more important in Louisiana than in any other state of the Union, from the fact that no other commonwealth is traversed by a greater mileage of navigable streams.² There is scarcely a railroad but that is paralleled for at least a portion of its length by streams of more or less depth. Before the organization of the commission, boats plying upon these waters had "no fixed tariff of rates, charging each shipper what pleased them, and paying no attention to distance, classification or value." The inevitable consequence was wholesale cutting of rates, first by the railroads and then by the steamers, leading fre-

¹ Louisiana Constitution, 1898, arts. cclxxxiii-lxxxix.

² *Report of Railroad Commission*, 1899, p. 29.

quently to disastrous and demoralizing rate wars. To make good, as far as possible, the losses suffered by the railroads, interior points not blessed with water competition had to pay abnormally high rates.¹

To put an end to this state of affairs was the first endeavor of the commissioners. First of all, the steamers were required to file their tariffs and rate books with the commission. Then these tariffs were gone over and revised, and the rule was established that from these new tariffs no changes were to be made without the consent of the board. With all watercraft under the protection of the commissioners, it was hoped that the steamboat traffic would prove as profitable as in years before.²

Even, however, with stable rates and the absence of any serious competition between the steamers themselves, the steamers were not able to compete on even terms with the railroads. Year by year, in spite of increases in rates by the commission and of appeals to merchants and business men in general, the river tonnage has dwindled. And there is no indication of any improvement in the immediate future. Such service as is still rendered appears on the whole to be prompt and reliable, but there is comparatively little demand for it.³

In proportion, almost, as the steamboat traffic has decreased, has the gasoline-boat trade developed. Great numbers of these boats are now operating on the smaller bayous and rivers, and in regularity and frequency of service they are becoming formidable competitors of the larger boats and even of the railroads.⁴ It is not too much to expect

¹ *Report of Railroad Commission*, 1899, pp. 29-30; 1900, p. 12.

² *Ibid.*, 1899, p. 30; 1900, p. 12; 1903, p. 15.

³ *Ibid.*, 1904, p. 19; 1907, p. 20; 1908, p. 31; 1910, p. 15; 1914, p. 29.

⁴ *Ibid.*, 1908, p. 32.

that these gasoline boats may eventually become the greatest single factor in securing voluntary and permanent reductions in rates from the railroad companies.

The work of regulation, as far as rail lines was concerned, proceeded somewhat slowly at first. For those roads operating east of the Mississippi river, Southern Classification No. 25 was prescribed, and as for those west of that river the Western Classification already in use on many of the lines was extended to all.¹ No general reduction in freight rates was attempted, and such reductions as were made applied chiefly to the carriage of staple commodities such as rice, cotton, sugar-cane and fuel oil.² With the lapse of time, however, reductions became more and more numerous, with special reference to the charges on such hauls as were unaffected by river competition.³ The report of the commission for as late a year as 1913, for instance, states that "vast numbers of freight rates have been reduced and only in extreme cases have advances in these rates been countenanced."⁴ Regarding passenger fares, the reports of the commission have been strangely silent.

No railroad commission in the South seems to have been involved in so much litigation as the Louisiana board. From the very year of its existence the railroads have contested almost every order of importance that it has issued.⁵ As late as 1913 the commissioners report that "the practice among corporations under the commission's control of contesting orders of the commission by filing suits to set them

¹ *Report of Railroad Commission*, 1900, pp. 14-15; 1903, pp. 25-26.

² *Ibid.*, 1899, p. 37; 1901, pp. 14-16; 1902, p. 21.

³ *Ibid.*, 1906, pp. 10-11.

⁴ *Ibid.*, 1913, p. 22.

⁵ *Ibid.*, 1899, p. 37; 1902, p. 16; 1905, p. 18; 1910, pp. 17-18.

aside, in state and federal courts, has grown alarmingly.”¹ Under the law it is a very easy matter for a carrier to file a suit of this nature. It merely has to set forth in a petition that the order of which it is complaining is unreasonable, in its opinion, and to ask that it be set aside. Not even an affidavit in support of the allegations is necessary.²

The commission has endeavored very seriously to root out this practise, or at least to make it as difficult as possible for the carriers to pursue this course. For example, by a constitutional amendment adopted in 1908, corporations under the commission's jurisdiction are subjected to a penalty of from ten dollars to fifty dollars a day, accruing from the date when the order becomes effective, if, after a resort to the courts to test an order of the commission, such order is there pronounced legal and valid.³ Again, a period of limitation—three months from the making of the order—has been fixed within which suits to set aside or modify the commission's orders must be brought.⁴ Further, one of the assistant attorney-generals of the state has been assigned since 1910 to act as the special counsel of the commission. This official has greatly assisted in clearing the dockets of suits which were filed during the early years of the commission's organization and which had never reached a final determination, and he has made it possible to enforce a speedy trial of most of the cases that now arise.⁵ Finally, a law of the very greatest importance has been recently enacted, which has already rendered val-

¹ *Report of Railroad Commission*, 1913, p. 23.

² *Ibid.*, 1909, p. 12.

³ *Ibid.*, 1907, p. 6.

⁴ *Ibid.*, 1908, p. 7.

⁵ *Ibid.*, 1910, p. 8.

uable assistance to the commission.¹ Before the passage of this act the railroad corporations were generally accustomed, as in many other states, to withhold important evidence in their cases before the commission and then, in case of a contest, to present those new facts to the court. Under the new law, however, "corporations are compelled to develop their cases fully before the commission". For if additional evidence is introduced in court the judge is "required to refer the entire record back to the commission", so that in the end the court is enabled to pass upon exactly the same facts as have been before the commission.²

The work of the commissioners, as a consequence, appears to be increasingly efficient. The handicaps of former years having been removed, the commission is moving forward more and more energetically along the way that it has mapped out.

¹ Acts, 1914, no. cxxxii.

² *Report of Railroad Commission*, 1914, pp. 27-28.

CHAPTER XVI

WEST VIRGINIA

As early as 1881 the forces for and against a railroad commission lined up in the West Virginia legislature. "Corporations," said Governor Mathews in his annual message, "should be confined to the exercise of their legitimate powers; they should . . . abstain from oppressing any class of their patrons by unjust exactions."¹ A bill in the senate, sponsored by Mr. Wm. M. O. Dawson (a life-long advocate of the commission idea and a later governor of the state), and providing for the establishment of a commission, was killed in committee. A bill in the house, prescribing maximum rates and prohibiting extortion, managed to pass that body; but the senate disposed of it by refusing to order it to a third reading.²

Interest among the legislators then languished for a good many years. In 1887, for example, Governor Wilson devoted a good part of his message to what he termed the "unreasonable, unjust and ruinous discrimination against our people, in freight and passenger charges, by the trunk line railroads passing through the state", and earnestly urged the creation of a commission "with such authority as may be necessary for the application and execution of the law".³ Yet this recommendation went absolutely unregarded.

¹ *Senate Journal*, 1881, p. 19.

² *Ibid.*, 1881, pp. 191, 208-11; *House Journal*, 1881, p. 284.

³ *Ibid.*, 1887, pp. 28-32.

The question was reopened in 1903 by Governor White in his message of that year. Referring to the fact that competition had entirely ceased among the three great trunk lines traversing the state—*viz.*, the Baltimore and Ohio, the Chesapeake and Ohio, and the Norfolk and Western—and that the laws then on the statute books prohibiting unreasonable charges and unjust discrimination were virtually a dead letter, he gave it as his opinion that there was no way out other than the introduction of public regulation. Even a single commissioner, he stated, with power only to investigate and report would be productive of great good, for "publicity itself is a good regulator".¹ This time there was a feeble response from the house, but the bill was smothered in committee.²

Two years later Governor White again called the attention of the legislature to this subject. No other matter had more persistently engaged his attention during the previous four years, he declared, through "appeals from mining, manufacturing and general commercial interests and . . . newspaper publications than that of railroad discriminations and the need of legislation which would secure to all shippers equal privileges in the use of these public highways". He reaffirmed, accordingly, all that he had suggested two years before.³ And once more a bill creating the office of Commissioner of Railroads and called into being at the governor's suggestion, died in committee.

In 1907 Governor Dawson took up the cudgels in defense of the commission idea.

"There cannot be any doubt," he said, "about the necessity of the creation of a commission to supervise the operation of

¹ *Senate Journal*, 1903, pp. 92-97.

² *House Journal*, 1903, p. 312.

³ *Biennial Message*, 1905, pp. 81-84.

railroads. . . . We need a commission . . . clothed with power after such investigation and hearing as is proper to be given to provide the remedy, including the fixing of maximum rates."

He favored, in fact, a corporation commission, with power to supervise and regulate all the public-service corporations of the state.¹ Again the governor's advice fell on deaf ears, although the legislature redeemed itself partly in his estimation by the passage of a two-cent passenger fare law.²

"For more than thirty years," said Governor Dawson in his message of 1909, "there has been a struggle in this state for protection to the people and business interests from the unjust discriminations and other injustices practised by the railroads. So far in that contest the people have been defeated." . . . "How long," he asked, "will the legislature keep the people of the state in this sort of servility?"³

A public service commission bill was soon after reported in the house. The house committee on railroads, to which it was referred, held a public hearing at which both Governor Dawson and Governor-elect Glasscock appeared, and pleaded for the passage of the bill. At any rate the bill got safely through the house. But in the senate it was referred to the judiciary committee (rather than to the committee on railroads, which was believed to be friendly to it), and there it lingered till the close of the session. Governor Dawson favored the calling of an extra session for the consideration of a public-service commission bill. The senators thereupon held a caucus and decided there to advise the governor against an extra session. For some unknown

¹ *House Journal*, 1907, pp. 43-50.

² *Ibid.*, 1907, pp. 661, 686; *Senate Journal*, p. 151.

³ *Biennial Message*, 1909, pp. 63-64.

reason he yielded to their advice, and so the bill received no further consideration during that year.¹

At the session of the legislature in 1911 a public utilities commission bill was introduced at the request of the state board of trade, but it was killed, likewise, in committee.²

Not until 1913 did the struggle of over three decades for commission regulation result in victory. With the Republicans in control of the legislature and pledged by their state platform to the creation of a commission, a public-service commission bill was pushed through both houses at the very close of the session. As modified by the amendments decided upon by the conference committee from house and senate, it was modeled very much after the New York law of 1907.³

The jurisdiction of the commission extends to all the public-service corporations of West Virginia. The original board consisted of commissioners appointed by the governor, with the consent of the senate, for two, four, six and eight years respectively. Their successors were to be appointed for terms of eight years each. Not more than two members might belong to the same political party. The concurring judgment of three out of the four was to be deemed the action of the commission.

Ample powers of service and rate control are conferred, but the commission has unfortunately no jurisdiction over the financial operations of public-utility corporations. An interesting provision declares that for the first ten years after the completion of a railroad or plant used in the public service, its charges may not be reduced by the commission below such a point as will prevent annual net earnings of

¹ *Wheeling Intelligencer*, Feb. 12, 24 and 27, 1909.

² *Ibid.*, Feb. 13-14, 1911.

³ *Ibid.*, Feb. 10 and 22, 1913.

at least eight per cent. Appeals from the commission's orders go direct to the highest court of the state and wisely have precedence over most other matters.¹

In 1915, by amendments to the public-service commission law, the number of commissioners was reduced to three, their salaries were lowered to \$6,000 each, and the powers and duties of the commission were slightly enlarged.²

¹ West Virginia Code, 1913, secs. dcxxxvi-dclvi.

² Acts, 1913, ch. ix, as amended by Acts of 1915.

CHAPTER XVII

SUMMARY OF THE PRESENT COMMISSION LAWS ¹

I. *Jurisdiction*

WITH the exception of Kentucky, the jurisdiction of whose commission extends to steam railroads only, all of the southern commissions have jurisdiction over at least the following companies, viz: steam railroad, car, sleeping-car, car-service, terminal, express, telegraph and telephone companies.² The commissions of all the states except Kentucky and Tennessee have jurisdiction, also, over street and electric railway companies; those of all states except Kentucky, Mississippi and South Carolina, over steamboat and other water craft companies; those of Louisiana, Virginia and West Virginia, over pipe line companies; those of Georgia, North Carolina, South Carolina, Virginia, and West Virginia, over gas, electric light and power companies; those of Louisiana, North Carolina, South Carolina, Virginia and West Virginia, over water and water supply companies; and, finally, those of Virginia and West Virginia, over

¹ The material in this chapter is based upon, first, an admirable publication of the National Civic Federation, entitled *Commission Regulation of Public Utilities*, and second, the answers received from the various state commissions in response to queries which were sent to the chairmen of all the southern commissions.

² In Alabama, in the case of street and electric railroad companies and also of telegraph and telephone companies, the jurisdiction of the commission is restricted to those only that are operating in more than one city or town.

turnpike and other internal improvement companies. Jurisdiction, then, is most inclusive in Virginia and West Virginia.

II. *Organization*

Creation. The state commissions, as they exist at present, were established in the following order: 1879, the Georgia Railroad Commission; 1880, the Kentucky Railroad Commission; 1881, the Alabama Railroad Commission; 1882, the South Carolina Railroad Commission; 1884, the Mississippi Railroad Commission; 1897, the Florida and Tennessee Railroad Commissions; 1898, the Louisiana Railroad Commission; 1899, the North Carolina Corporation Commission; 1902, the Virginia Corporation Commission; and 1913, the West Virginia Public Service Commission.

Composition. With the exception of Georgia (which has five commissioners) each board comprises three commissioners, one of whom is selected as chairman (in Alabama termed president), usually by the commission itself.

Manner of Selection. In all but two states—Virginia and West Virginia—the commissioners are elected by the people at the general elections. From the outset the elective system has been by far the favorite method of choice. The most important changes from the appointive to the elective system have been those of Kentucky in 1891, Florida in 1897, and Georgia in 1907.

Term of Office. The term in Alabama, Florida, Kentucky and Mississippi is four years; in the remaining states, six years. There has been a marked tendency in the past two decades toward the longer term. West Virginia, in her law of 1913 (amended in 1915) went so far as to provide for terms of eight years.

Salary. The range is from \$1,900 in South Carolina; \$2,000 in Mississippi and Tennessee; \$2,500 in Florida and Georgia (the chairman receives \$4,000); \$3,000 in Alabama (the chairman receives \$3,500), Kentucky (the chairman receives \$3,600) and Louisiana; \$3,500, in North Carolina; and \$4,000 in Virginia, to \$6,000 in West Virginia.

Disqualification for Membership. In none of the states may commissioners have an interest (be it direct or indirect) in any corporation or public utility over which the commission has jurisdiction. They are forbidden to accept gifts, gratuities or favors for themselves or friends from the companies under their jurisdiction. Five states—Alabama, Georgia, Kentucky, Tennessee and West Virginia—forbid their commissioners to hold any other political office or to engage in another business. A couple of states provide that one commissioner each is to be chosen from the farmers, lawyers and business men of the state respectively.

Privileges. Alabama, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia provide for the free transportation of the commissioners and their employees within the state while in performance of their duties.

Assistants. All the commissions are provided with a secretary or clerk, and the majority of them enjoy the services of one or more rate experts. To some of the boards—notably those of Florida, Georgia and Louisiana—a special attorney is attached, in order that whatever litigation these commissions may be involved in may be the more expeditiously disposed of. The Florida commission is assisted, also, by an inspector—a very necessary and useful official. The other southern states would do well to create similar offices.

Removal of Members. In about half the states this is done by the governor; in the other half, by the legislature. The causes of removal, as elsewhere, are, in general, inefficiency, neglect of duty, and misconduct or malfeasance in office.

Vacancies are filled, either temporarily, or permanently, by the governor of the state,—in a couple of states, with the advice and consent of the senate.

III. *Duties*

Duties of Supervision. There are comparatively few provisions of law relating to these duties, for the reason chiefly that the legislatures have very often confused duties with powers, and have accordingly provided for many of the commissioners' functions under the head of powers instead, more properly, of that of duties. Regarding such technical matters as construction, maintenance and operation, the requirements in all the states are that the commissions must inspect from time to time the condition, equipment and facilities of each railroad with reference to the safety and convenience of the public. Over half the states require the investigation of accidents and recommendations in regard thereto. In all states it is the duty of the commission to notify the railroads of violations of the law that come to its attention. In a few of the states the commissions are positively required to inspect the books, accounts and papers of the railroads, to investigate the reasonableness of interstate rates so far as their respective states are concerned and to appeal to the Interstate Commerce Commission for relief when it is deemed advisable, to publish schedules of the rates prescribed and to probe for violations of the law regarding extortion and discrimination.

Duties as to Reports. It is the duty of each commis-

sion to make an annual¹ report to the governor,² the details of which are specified in a few of the commission laws, and to recommend such revision of the railroad or corporation law as it may deem desirable.

IV. Powers

Powers Relating to Construction, Maintenance and Operation. These, in brief, are powers over roadways, relating to repairs to tracks, bridges, etc.; over crossings, such as the power to separate highway from railroad grades; over stations, such as the power to order the erection or maintenance of suitable depot facilities; and over trains; relating to the equipment, running, and character of service. Every commission is endowed with at least a few of these powers, and the tendency for over a decade has been in the direction of conferring more and more powers of this nature upon the various commissions.

Powers Relating to the Conditions of Business Administration. As regards proceedings, all the commissions have authority to hear complaints and try cases, to inspect books, records and memoranda, to issue subpoenas and to compel the officers, agents and employees of railroads, as well as shippers, to testify under oath.

About half the commissions may regulate the accounting practises of, and prescribe systems of accounts for the companies under their jurisdiction.

Power is conferred upon all the commissions to prescribe, in the main, the details and form of the annual reports which must be rendered by the corporations subject to them.

Under the head of business management there are

¹ Biennial in Mississippi.

² In Mississippi and South Carolina reports are made to the legislature.

provisions of the most diverse nature. In Georgia and Virginia, companies must apply to the commission for authority to issue stocks, bonds or other evidences of indebtedness; and in Georgia the amount, purpose and use must be approved by it before issue can be made. In nearly all the states contracts between railroads must first be submitted for the approval of the commission. In every state except Kentucky the commission may prescribe rules and penalties covering the prompt receipt, carriage and delivery of freight; the furnishing of cars to shippers; and storage and demurrage charges.

The powers relative to rates are, of course, the most important of all powers. (a) The general tendency in the South has been toward a wide extension of the rate-making powers. With the exception of Kentucky, it is now the duty, as well as the privilege, of every commission to make for each railroad operating in the state a schedule of reasonable and just rates, and to revise the same from time to time. This power extends to both freight and passenger rates, as well as to car charges and numerous other charges. The Kentucky commission has power to revise only, either upon complaint or upon its own motion. (b) In 1890 there were but two commissions with power to make joint rates for connecting railroads, and to apportion them between the participating carriers, namely, Georgia and Mississippi. South Carolina fell into line in 1892 and Florida, in 1897. Since then, all of the remaining states, except Kentucky, have conferred this important authority upon their commissions. (c) Every commission has the authority to make regulations for the prevention of extortion and unjust discrimination.

V. The Method of Procedure before the Commissions

In all the states, during the investigation, preparation

and hearing of cases, the commissions are not bound by the rigorous technical rules of pleading and evidence, and "may exercise such discretion as will facilitate their efforts to understand and learn all the facts bearing upon the right and justice of the matters before them." Briefly, the method of procedure is as follows :

As soon as complaint, either oral or in writing, is made to the commission, an informal statement of the facts, together with the name or title of both plaintiff and defendant, is filed in duplicate by the secretary of the commission. The complaint is then placed on the docket. One copy is mailed to the defendant, with a notice to answer within a certain number of days, and the other becomes a part of the record in the case. The answer, when received, is also filed in duplicate, and one copy is mailed to the plaintiff, the other being placed in the record of the case. If the defendant concedes the demands of the complaint or if he offers to compromise, the matter is referred to the plaintiff, and if the latter accepts the settlement the case is at once closed. Otherwise the case is set for a hearing at a session of the commission convenient to both sides. At the trial legal formalities are, as far as possible, dispensed with. The parties may appear either in person or by attorney. Witnesses may be examined by either side and are further cross-examined by the commissioners. The arguments are then made and the case is submitted. Often decisions are rendered immediately upon the conclusion of the trial. But where questions of great importance are involved the decision is withheld until the whole matter has been carefully considered. The decision, in either event, is embodied in a written order, copies of which are mailed to the plaintiff and defendant.¹

¹ Adapted from *Report of Louisiana Railroad Commission*, 1899, p. 35.

CHAPTER XVIII

SURVEY OF THE PRESENT COMMISSION SITUATION IN THE SOUTH¹

I. *Selection of the Commissioners*

Political considerations still play too great a part in the choice of commissioners. Such considerations are sure to be of undue influence whenever the members of commissions are dependent for their offices upon the caprice of the voters, as they are at present in all the states of the South except Virginia and West Virginia.

The election of railroad commissioners on the State ticket has brought the railroads into politics in a most objectionable way, embittering the relations of railroads and people to the detriment of the interests for which the commission is created, and giving rise to charges of bribery and corruption of a most serious character.²

Experience would seem to indicate that the fittest men are secured when the commissioners are appointed by

¹ This chapter is based upon the answers received in response to queries which were sent to the state commissioners of the South. The compilation of statutes published by the National Civic Federation under the heading, *Commission Regulation of Public Utilities* (1912), has proved of great service. For many valuable suggestions I am indebted to the excellent survey of public utility commissions in the United States, in *Applied History*, Vol. I, State Historical Society of Iowa, 1912.

² Dixon, "Recent Railroad Commission Legislation," in *Political Science Quarterly*, December, 1905.

the governor. The most capable commissioners in the early history of commission development in the South were those of the first Georgia commissions, while the efficient commissioners of the past decade have undoubtedly been those of Virginia, and in both instances the members of the commissions were selected by the state executives. At the present time, moreover, the membership of a large majority of the strongest commissions (both railroad and public service) of the other portions of the United States is composed of men who owe their positions to the discriminating choice of governors. To name but a few, the commissions of California, Connecticut, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Washington and Wisconsin are appointive. Yet in but two southern states out of eleven are the commissioners selected by the governor, and the tendency, as revealed in the Georgia, Florida and North Carolina commissions, appears to be running in favor of the elective system.

II. *Term of Office*

The practise was well-nigh universal in the early history of the commissions of removing a commissioner just at the time when he was beginning to get a fair insight into the intricate problems connected with his office and was entering upon a period of usefulness to the state. Georgia was the only conspicuous exception to the prevailing notion that from two to four years was long enough for a commissioner to hold office. Even now the people of the South are still too much inclined to think that if a man is of requisite age and is morally responsible, he is fully qualified to hold any public office. In a few of the states, then, the people appear to be of the opinion that there is no reason why a commissioner

should be allowed to monopolize an office for a long term of years. There is scarcely an able commission in the North or West the members of which do not enjoy terms of at least six years, whereas in the South there are four states—Alabama, Florida, Kentucky and Mississippi—where the commissioners are limited to terms of but four years. It is encouraging to note, however, that the southern commissioners are being retained in office for continually longer periods of time. Of the present Virginia board, the chairman has served for nine years and another member for eight years; of the present Georgia board, the chairman has served for eight years, and another member for nine years; of the present Tennessee board, the chairman has served for eleven years; of the present Florida board, the chairman has served for nearly fourteen years and another member for nine years; and of the present Louisiana board, the chairman has served for eight years.¹

III. *Technical Fitness*

There is a deplorable lack of requirements in the south as to the technical fitness of the commissioners. Only four states,² for example, provide for the presence on their commissions of experienced railroad men. The people and their representatives in the legislatures do not seem as yet to recognize the fact that commissioners with little or no special training for their peculiar duties cannot begin to cope with the perplexing problems that

¹ The longest terms served have been those by commissioners Trammell (L. M.) of Georgia, 17 years; Tunstall of Alabama, and Hill of Virginia, 15 years; Burr of Florida, 14 years; Shorter of Alabama, 13 years; McNeill of North Carolina, and Caughman of South Carolina, 12 years; and Wallace of Georgia, deFuentes of Louisiana, Rogers of North Carolina, and Bonham and Duncan of South Carolina, 11 years.

² Florida, Georgia, South Carolina and North Carolina.

come so steadily before the various boards for solution. They do not appear to have realized that the regulation of railroads, as well as of other public utilities, demands a high degree of expert knowledge. Effective and broad-minded regulation can never be carried out by boards composed solely of farmers, lawyers, merchants, and the like, no matter how good their intentions, nor how wide their knowledge of their own callings. The regulation of railroads is an increasingly scientific matter calling for the ever-enlarging employment of scientific knowledge. It is unfair, then, to expect that three commissioners, elected by the people with small reference to their qualifications—as is the case generally throughout the South—can meet the situation in the intelligent manner in which that situation is being handled in the more progressive states of the North and West. Since railroads are by far the most important public utility under supervision it follows that one commissioner, at least, should be a man with an expert understanding of matters relating to railroad transportation. Another commissioner should be a lawyer with a good knowledge of railroad and public utility laws. The third commissioner might well be a business man of wide experience and of sound common sense.

At any rate, if the states of the South as a whole wish to have efficient and intelligent regulation they must either provide for the selection of experts upon the various commissions, or they must see to it that commissioners are retained in office long enough to become tolerably familiar with the duties of their positions. There is no other way out of the unsatisfactory conditions that now prevail in the majority of the southern commonwealths.

IV. *Appropriation for Commission Expenses*

In no other sections of the United States are the salaries paid to the commissioners as small, on the whole, as those which the southern commissioners receive. With the exception of the Vermont commission there is not a commission in the entire country so poorly paid as the South Carolina board, while outside of North Carolina, Virginia, and West Virginia there is not a state in the South that pays its commissioners more than \$3000 a year (excepting the chairman). Compare these figures with the amounts paid by states in other parts of the country. For example, the commissioners of Colorado, Indiana, Kansas, Montana, Oklahoma and Oregon receive \$4000 a year; those of Nevada, \$4,250 (the chairman gets \$5000); those of Maryland, Washington and Wisconsin, \$5000; those of California and Ohio, \$6000; those of New Jersey, \$7500; those of Pennsylvania, \$8000; and those of New York, \$15,000 a year. High-grade men, as a rule, simply cannot be had at the small salaries which the states in the South are now paying. If these states desire the services of men with that specialized knowledge that is at present almost indispensable, they must go after them with offers of salaries—say, from \$5000 to \$6000—which men of ability are able to obtain in private callings.

But the comparison is even more unfavorable to the South when the total amounts of the annual appropriations for commission expenses are taken into consideration. The latest figures available for the southern states are as follows: Alabama, \$18,000; Florida, \$30,000; Georgia, \$28,700; Kentucky, \$17,300; Louisiana, \$20,500; Mississippi, \$11,500 (approximate); North Carolina, \$24,340; South Carolina, \$20,000; Tennessee, \$11,-

400; Virginia, \$29,100; West Virginia, \$40,000. The average, then, is around \$23,000. What a feeble showing they make compared with the amounts that states in the North and the West are contributing!¹ In 1911, for instance, the appropriation in Minnesota was \$35,000; in Texas, \$37,280; in Arkansas, \$64,000; in Massachusetts, \$64,912; in Nebraska, \$66,511; in Oklahoma, \$73,000; in Wisconsin, \$99,819; and in New York (for commissioners alone), \$150,000. Since then, it is safe to assume, appropriations have mounted considerably. Certain it is that the annual expenditures in states like Connecticut, Maryland, New Jersey, Ohio and Washington, are well over the \$100,000 mark. Why should Mississippi appropriate but one-seventh, or less, of Maryland's total, and why should Georgia fall so far behind Oklahoma?

The truth is that the southern commissions (with the sole exception of the West Virginia Public Service Commission) have never been supported by their respective states in any but a beggarly fashion. Just as various inspection laws,—as, for instance, those concerned with factories,—have not been as effective as they were intended to be because of the lack of funds for proper and thorough inspection, so the railroad commission laws have not been enforced in the effective manner in which other states, like Wisconsin and California, have enforced theirs, for want of the machinery adequately to carry them out. There is but little use in enacting restrictive legislation and in conferring extensive authority upon a commission, unless that legislation and that authority are backed up and made a reality through ample financial resources. Laws prohibiting consolidations, for instance,

¹ *Railway Age-Gazette*, Feb. 28, 1913.

have been almost a dead letter in the South, for the commissions have simply not had the money with which to ferret out and prosecute the numberless violations of the statutes that have occurred. The average southern commission of today is fortunate if it may boast of even a rate-clerk, let alone special counsel; while the provision of a consulting engineer or of an inspector is a luxury possessed by but a couple of the boards. If regulation is to be both effective and intelligent the commissioners must be men of special training and of more than ordinary ability; and they must be supported by competent staffs of engineers, inspectors, rate-experts, statisticians, accountants and the like. The work that has been laid upon the commissions in recent years in the way of supervision of all sorts of public utilities is now so technical in its aspects that any support short of what has been described inevitably means faulty and harmful regulation.

There is an imperative need, therefore, for a large increase in the annual appropriations provided for the support of the southern commissions. If Maryland can afford \$75,000 yearly for the maintenance of its commission, then why cannot Virginia, or North Carolina, or even Mississippi and Tennessee,—with their small allowances of less than \$15,000 a year, provide in an adequate fashion for their boards? There are many, of course,—and possibly they form a majority of the people of the South, who will object that taxes are now quite high enough, without having them increased in order to put more money at the disposal of a board already, in their opinion, well enough supported. Such persons forget that the additional amount exacted from them by taxation would be returned to them several times over in the fairer and more discerning methods of

supervision thereby rendered possible. But if the thought of increased taxation is unbearable, resort may be had to the imposition of fees of one sort or another upon the corporations regulated. Very likely this would best be worked out by the adoption of the method now in force in Wisconsin, whereby a fee of one dollar is charged by the commission for every one thousand dollars, par value, of stock or bonds approved by it. Of course all fees are collected, not by the commissioners, but by the state treasury. Considerable revenue has been obtained in this way, since the corporations have found that the approval of the commission has inspired public confidence in the securities thus approved and has so boosted their market value as more than to cover the amount of the fee. There is therefore no valid reason why the members of the southern legislatures should not promptly grant such financial support to the commissions of their respective states as will enable them to carry out the provisions of the law in the manner in which they were intended to be executed.

V. *The Valuation of Railroad Properties*

To the discretion of the commissions is left the ascertaining of the value of the railroad properties in the various states. There are, in fact, but four or five states in the country which make such valuation mandatory upon their commissions. Hampered as the southern commissioners have been by niggardly appropriations, they have been able, on the whole, to do but little in this direction. The only comprehensive valuation so far made was that accomplished by the Virginia commissioners in the first years of the corporation commission's existence. It would certainly appear desirable for the commissions to make a valuation of at least all new construction, and of

as much of the old as possible, and to make these valuations conclusive evidence in subsequent court proceedings. There is altogether too much expense and delay involved nowadays in court appraisals.

VI. *Accounts*

Upon no one of the commissions in the South is it mandatory (as in a few states like Wisconsin and Kansas) to regulate the accounting practises of, and prescribe systems of accounting for, the railroads under its jurisdiction. All of the commissions have the power, however, to prescribe systems of accounting,—in which they follow the forms prepared by the Interstate Commerce Commission (a desirable feature of uniformity),—while most of them are endowed with authority to regulate the accounting practises of the railroads. It cannot be said, though, that this authority is of any great importance, since there is no provision in any state for the auditing of accounts. The commissions simply check up the reports submitted by the railroads, and this, naturally, results in a very unsatisfactory sort of publicity. There has been in the experience of all the commissions but one noteworthy auditing of a railroad's accounts, and that was an audit, undertaken by the Florida commission, of the books and accounts of the Louisville and Nashville. And yet the southern commissions are this time in excellent company, for there are less than five states in the Union that provide explicitly for the auditing of accounts.

VII. *The Regulation of Capitalization*

There are but few states in the country (among them Wisconsin, New York, New Jersey, Ohio, California, and Maryland) that have given their commissions jurisdiction

over the matter of capitalization. It is not surprising, therefore, to find but one State in the south whose commission has authority to regulate the capitalization of the railroads. The Georgia law follows the New York statute rather closely in providing that no securities shall be issued to run for more than twelve months, except for certain specified purposes, and upon the approval of the commission. The duty is also laid upon the commission of seeing to it that the proceeds are expended in accordance with the law.

There are a number of defects in this law, as measured by the standard exemplified in the Wisconsin statute. For one thing, there is no prohibition of stock or scrip dividends, or of shareholders' privileged subscriptions and other refined forms of "melon cutting." Again, there is no provision forbidding the issue of capital stock at less than par, paid either fully in cash or in property at a valuation fixed upon by the commission. Further, the law throws the way open to overcapitalization by its failure to prohibit the capitalization of "good will" and the payment in securities for labor or services. Lastly, there is no requirement in regard to the amortization of that part of the indebtedness which cannot properly be charged to capital account.

As to whether general regulative authority over financial matters should be conferred upon the southern commissions which now lack that authority, there is certainly room for grave doubt. Of course a unified financial control by the national government is the logical way out in the growing conflict between state and federal jurisdictions. But until the proper measure of authority is conferred upon the Interstate Commerce Commission or other federal body it may, indeed, be advisable for the states of the South to discard the

passive policy to which they have clung so long, and to clothe the various commissions with power such as that now enjoyed by the Wisconsin board. The experience of some of the states has demonstrated that the protection of investors may readily be combined with fair dealing to the railroads. On the other hand, if the powers of the commissions are to be increased in this way there must be provision, at the same time, for such a change in the personnel of the majority of the commissions as will guarantee just treatment to the railway carriers. If the control over capitalization is to be taken from the roads and lodged in the commissions, it must be placed in the hands of men who are both expert and disinterested, and in whom, therefore, the railroads, as well as the people, may justly repose their confidence.

VIII. *Rates*

The two duties of primary importance laid upon the commissions in respect to the subject of rates have been the fixing of reasonable rates and the elimination of that greatest of railroad evils—discrimination. With regard to the latter, the evidence clearly shows that the efforts of the commissioners, on the whole, have been successful. Excepting Kentucky, fluctuations in intrastate rates appear to have been reduced to a minimum. In fact, the greatest good achieved by the various boards has probably been the securing of relatively stable and uniform rates throughout each state. Comparatively few cases of discrimination (with the exception, always, of Kentucky) now come to the attention of the commissions, and they unite in declaring that this abuse seems to have been pretty well stamped out. And little wonder, in view of the authority of the majority of the boards to prescribe exact, and not alone maximum,

rates, and in view, also, of provisions requiring the railroads not only to keep open for inspection at their offices schedules of every rate or charge made, but also to give notice to the commissions of intended changes in the existing schedules. And yet, as the chairman of the Virginia commission truly says, "Until human nature and human laws become perfect—discriminations will always exist in greater or less degree." No sensible person acquainted with the chaotic business conditions that existed in each state prior to the establishment of the commissions would deem it advisable to invite a return of those conditions through the abolition of these boards.

With reference to the prescribing of reasonable rates and fares, not so much success can be said to have attended the efforts of the southern commissions. They are empowered to fix "reasonable and just" rates and classifications (Kentucky excepted); they may order joint rates, and commodity and other special rates; and in South Carolina the commission may establish basing points. The predominant principle emphasized by the law-makers has been that of "reasonableness." But what is to be understood by "reasonable"? The courts, unfortunately, do not define the term. The commissioners, then, have had to resort to various principles which have been recognized elsewhere in the fixing and classification of rates. The two basic principles are, of course, the "value of the service" and the "cost of the service" doctrines. Numerous illustrations of both doctrines are scattered through the pages of annual reports. It has been very customary, for example, to put ordinary soap in one class, and fancy soap in a higher class. Since the expense of haulage is the same to the railroads, be the soap common or fancy, it is indisputable

that the commissioners have thus placed different kinds of soap in different classes because fancy, is more valuable than common soap. The "cost of the service" doctrine is illustrated, on the other hand, in the rates fixed for the transportation of butter. It has been customary for the boards to put butter carried in boxes or kegs in a lower class than butter transported in a fancier way as, for instance, in crocks, since the cost of carriage is more expensive in the latter than in the former manner.

It is impossible to say to which principle the commissions, as a whole, have attached the more importance. No one doctrine appears to have been consistently and exclusively followed by any of the boards. The commissioners report, time and time again, that various circumstances have entered into their calculation in the making of "reasonable" rates. The only definite impression left in the mind of one who studies their reports is very likely to be—however unfortunately—that the commissions have deliberately sought to protect the commerce of their respective states by squeezing the railroads as hard as the courts would permit. Every commission, without exception, has selfishly endeavored to promote the welfare of the people of its own state at the expense of those of adjoining states. Intrastate rates have only too often been reduced by commissions with the sole purpose of thereby preserving state markets for state trade, in utter disregard, necessarily, of discriminations thus practised against the trade of other states.

The widespread reduction of rates and fares in the past decade, especially, has undoubtedly done serious injustice, in many cases, to the railroad carriers. There was no good reason why some of the commissions should go to the extreme of applying to the sparsely populated South, rates similar to those under which the railroads of the

North, with their dense passenger traffic and heavy freight tonnage, were operating. A few of the commissions, to their credit, acknowledged in due time that they had gone beyond the bounds of reasonableness (like the Virginia commission), and made such restitutions to the roads as they could, in the shape of increased charges.

Many of the southern roads (such as the Louisville and Nashville, the Atlantic Coast Line, and the Norfolk and Western) have continued to operate under the reduced rates without experiencing a serious falling-off in their net earnings. These are the carriers, chiefly, whose traffic is densest and whose margin of safety, due to conservative financiering, has generally been adequate. Other companies, however, (of which good examples are the Southern Railway, the Seaboard Air Line, and the Atlanta, Birmingham and Atlantic), have found even moderate reductions by commissions and legislatures so oppressive that they have been forced to practise the greatest economies to avoid financial disaster. A few of them, indeed, have gone into the hands of receivers,—not as the result of the acts of commissions alone, but they were still more or less hurried along the path to bankruptcy by ill-timed reductions.

From the very beginning of commission regulation in the South, the trouble has been that the various commissioners have had to grope almost entirely in the dark in their endeavors to prescribe “reasonable and just” rates. Many of them have frankly confessed that even after extensive investigations they were not prepared to do more than to guess at what should be done in the way of attaining “reasonableness” in the fixing of rates. The majority of the commissioners, handicapped as they have been by the want of appropriations for the auditing of the railroads’ accounts, have not had the right sort of

data to work with. Lacking the information that a careful audit would bring to light, they have been continually at sea as to the true financial condition of the railroads under their jurisdiction. It is little wonder, then, in spite of the honest intentions of the commissioners, that many instances of grave injustice have been the consequence of such haphazard methods of prescribing "reasonable" rates.

What is imperatively needed in the South is such an appropriation for railroad commission expenses by the various states as will permit of the working-out of definite and scientific methods similar to the cost system of the Wisconsin commission. The "cost of the service" system, until very recently believed unworkable by the great majority of railroad managers, has been proved by that board to be the fairest method in existence for the determination of the reasonableness of rates, and has been accepted by the Interstate Commerce Commission, and, in a much modified form, by several of the states (including Virginia, North Carolina and Georgia of the southern commonwealths). The Wisconsin board, in brief, has recognized two predominating factors in the making of reasonable rates, namely, the proper classification of the commodities carried, and the cost of the service per unit of transportation. In the classification of freight the value of the article transported has, quite justly, been given primary consideration. As regards the cost of the service, freight and passenger expenses have been apportioned between (a) terminal expenses and (b) the cost of movement between terminals. The elements, for example, that have been studied in the second of these divisions are (1) the loading of commodities, (2) the density of the traffic, (3) the weight of the article in proportion to bulk, (4) the distance carried,

and (5) the risk or liability to damage. The cost system, in short, has been made to rest, as it should, upon facts derived from the operation of the railroads, and has been successfully established in Wisconsin by a very elaborate and painstaking system of calculations. So efficacious has the cost system proved itself and so palpably fair to both the railroads and the people, that not even once has the commission suffered a reversal in the courts when attacked as to the reasonableness of any of the rates which it has promulgated. A sorry contrast, indeed, between the results of scientific rate-making in Wisconsin and the consequences of mere guess-work, as a whole, in the South, where the railroads have good reason to doubt the fairness of the rates and fares under which they have been operating so long.¹

IX. *Court Review*

Final determination of the questions that come before the state commissions of the South must be vested in some sort of body, and it would seem but fair that the determination be made by the tribunal best qualified to render the final decision. The ideal railroad or corporation commission,—an ideal which the Wisconsin Railroad Commission approaches as closely as any commission in the United States and more closely, in fact, than any of the southern commissions,—would be the fittest agency of government to which to entrust the ultimate solution of perplexing railroad problems. Such a board would be fully as impartial and judicious as the courts are today, and far more expert than any other governmental body; its sources of information would be as complete as could

¹ Holmes, *The Regulation of Railroads and Public Utilities in Wisconsin*, pp. 110, 115, 122, 139.

reasonably be desired; while its freedom from hampering technicalities would do away with the tremendous expense, the interminable delays, and the provoking uncertainty of present-day litigation. Only with respect to the two questions as to the exceeding of its authority or as to its extra-legal procedure should the decisions of such a commission be reviewable by a competent court. Its findings as to facts should otherwise be absolutely final.

Unfortunately, however, the people of the United States appear to view with equanimity the long established doctrine of judicial control over the decisions of administrative bodies. The utmost that can be accomplished at the present time, therefore, is, first, to make the state commissions as impartial and expert as possible, and then to provide that the decisions of those bodies shall be, as nearly as possible, conclusive. It will be well worth while to ascertain what, if anything, has been done in the South, toward the hastening of the final determination of cases which come before the commissions.

1. In Virginia and West Virginia the power of review over the commissions' orders is very wisely confined to the highest court of each state. In this way a great deal of time and expense is saved, for in important cases the decisions of lower courts are almost sure to be appealed to the court of last resort. But in the entire country there are less than ten states that provide for this desirable limitation of the power of review. Alabama and Georgia afford some relief in the requirement that a suit to vacate an order of the commission may be prosecuted in a court, alone, of the county in which the state capital is situated.

2. In some states (like New Jersey and Washington)

the decisions of the state commission may be reviewed by writs, only, of error or certiorari; in others (like Oklahoma, Virginia and West Virginia), by appeal alone. The great advantage of either of these methods lies in the fact that a new trial, with its attendant delays and expenses, is thereby out of the question. In the other nine states of the South, then, the courts do not get jurisdiction until either the commission brings a suit to enforce an order or to recover a penalty, or an aggrieved party starts an action to set aside an order of the commission. Given commissions with an expert and impartial membership, there is no excuse for the existence of such costly and antiquated modes of obtaining jurisdiction by courts.

3. Very desirable are provisions which set a period of limitation within which suits to set aside or modify the commission's orders must be brought. And yet conditions in the South, in this respect, are not at all satisfactory, for some states (Georgia, Kentucky, South Carolina and Tennessee) have neglected to set any period of limitation at all. In other states the period is entirely too long. Florida, for example, grants four years of grace. Mississippi and Virginia grant six months; Louisiana, three months; Alabama and West Virginia, thirty days; while North Carolina sensibly limits the period to ten days. The usual time throughout the South in which appeals from an inferior to a superior court must be made is thirty days.¹

4. Six of the states give various kinds of preference to railroad and public utility cases, in the desire thus to hasten their final determination. Alabama and North Carolina give such cases precedence over all others except

¹ Ten days in Louisiana and North Carolina.

criminal cases; Florida, over all except habeas-corpus proceedings; Virginia, over all except habeas-corpus and commonwealth cases; West Virginia, over all except the correction of assessments; and Louisiana and Tennessee, over all other cases whatsoever. The remaining five states would do well to concede similar privileges.

5. Every state, with one exception, confers upon its courts (in Virginia and West Virginia, the supreme court alone) the power of passing upon the reasonableness and legality of its commission's orders. That exception, strange to say, is Mississippi, which goes half way and provides that the supreme court may set aside an order of the commission in the event, only, that the commission has exceeded its jurisdiction in the making of such order. Most of the states declare the findings of their commissions to be *prima facie* valid, so that the burden of proving that the order is unlawful and unreasonable is upon the party attacking the commission's order. But this is by no means enough, for the courts have no business to inquire into anything but the questions of law involved in a particular case. It would be a great step forward for any state to follow the example set by California and Vermont—and, in part, by Mississippi—and to make the findings of its commission absolutely conclusive as the facts.

6. A favorite device with railroads that are attacking the rulings of a state commission is to withhold important evidence in the development of their cases before the commission for the purpose of introducing it in court upon appeal, relying upon the new evidence to secure a reversal of the commission's decision. A number of the states¹ have greatly lessened this practice by the enact-

¹ Florida, Louisiana, Mississippi, South Carolina and Tennessee.

ment of legislation compelling the railroads fully to develop their cases before the commission, under penalty, otherwise, of having the entire record referred back by the court, in case of appeal, to the commission for further hearing. An even more effective way of shutting off unnecessary litigation would be to require—as is already required by some of the northern and western states, like California, Oklahoma, Vermont and Washington, and also, recently, by West Virginia—that the court, upon appeal, should be confined solely to the evidence certified to it by the commission.

7. Finally, several miscellaneous provisions may be noted which have for their end the discouraging of wearisome litigation. Louisiana has a rather drastic statute according to which corporations under the jurisdiction of the commission are subjected to a penalty of from \$10 to \$50 a day, accruing from the date of an order, in any case where such order, upon appeal, is pronounced legal and valid by the court of review. In North Carolina, Virginia, and West Virginia, no suspension of the commission's order may be had until the petitioning railroad has first filed a bond with the commission, sufficient in amount and security to insure the prompt refunding of all charges which such company may collect, pending the determination of the appeal, in excess of those authorized by the final decision of the court of last resort. North Carolina and Virginia add the excellent requirement that the appealing company must keep such accounts as will show the names and addresses of persons to whom overcharges will be refundable in case the company's charges are not sustained by the court.

In a majority of the southern states, then, a simple appeal by the railroads to the courts operates to stay an order of the commission. And further, it is a ridicu-

lously easy matter for a railroad to file a suit for the setting aside of an order. It is only necessary for the carrier to set forth in a petition that the order of which it is complaining is unreasonable, and ask that it be set aside. The road does not even have to file an affidavit in support of whatever allegations it may make. Such a condition of affairs should be regarded as intolerable by every self-respecting commonwealth in the South, and efforts should be made at once to remedy a situation that is exactly to the liking of the railroads. For the carriers, well knowing that to postpone an order of a commission for a length of time is nearly equivalent to foiling it altogether, will never cease their resort to litigation for the sole purpose of delay, until all the states have made the pursuance of such a course as unpleasant and difficult as is now the case in North Carolina and Virginia.

CHAPTER XIX

CONCLUSION

SOMEWHAT over a decade ago, a gentleman of prominence in Georgia expressed himself as follows regarding the commission of that state :

The commissioners draw their salary and their breath. They are, as a rule, the servile tool of the railroad corporations, and have been of no service whatever to the people. They have allowed the grossest extortion to be practised against the peach growers, the melon growers, lumber dealers and others, without lifting a hand in their defence. . . . The railroad commission amounts to nothing more than a pretence, a sham, an imposition on the taxpayers, and an insidious prop to the present system of corporative robbery.¹

These words of censure were uttered at a time when the most serious abuses of the railroad systems were still far from unchecked, and when it was a fair question, indeed, whether the majority of the southern commissions had not done more harm than good. Unjust discriminations had been by no means eliminated, the inflation of capitalization was a prevalent practise, unlawful combinations and consolidations were still flourishing, railroad lobbies were pursuing their nefarious work of bribery and corruption, shippers were far from standing upon an equality, and, in brief, the equality and justice that both federal and state laws were striving to secure had fallen lamentably short of realization.

¹ Quoted in Parsons, *The Railways, the Trusts, and the People*, p. 234.

Such a picture as that drawn by the Georgia gentleman would be greatly exaggerated at present, however, for the evidences of advance in the South, as in the United States in general, are too conclusive to admit of any refutation. The past ten or fifteen years have witnessed an almost general eradication of the crude theories of railroad management under which so many railroad officials so long labored. The railroad men of the country, as a whole,—as probably the great majority of them have been for decades past—are now sincerely desirous of keeping in consideration the goal of common prosperity, and of conforming to the legitimate demands of public interest. The large and well-managed corporations of the South, as a rule, show a most commendable readiness to co-operate with the commissions in their work, so that by comparison with former years there may be said to be but remarkably little friction between the railroads and the various boards. The commissioners have long since discovered that by “bringing the complainants and the railway managers face to face in the presence of, and under the direction of, the commission” judicial hearings can be avoided in most instances, and that ordinarily “such relief as is just and proper can be secured without the delays and expense of litigation.”¹ The comparatively few cases of failure to co-operate that do arise, come generally from small companies operated by officials ignorant of the law.

It is a matter for regret, however, that in the performance of their functions the commissioners of the various states still seem disposed to guard the interests of the industries of their respective commonwealths more jealously than a sense of justice would demand. The

¹ *Report of Virginia Corporation Commission*, p. 12.

majority of the commissioners appear not to have heeded the admonitions of the Interstate Commerce Commission and the United States Supreme Court in the Schreveport case: if one may judge from a perusal of recent reports, the uppermost thought in their minds seems to be even yet so to lower intrastate rates in comparison with corresponding interstate rates and the intrastate rates of other states as to favor their own jobbers and producers at the expense of those of adjoining states. The consequence is a discouraging lack of consistency in the policies of the different states.

The continual growth of interstate commerce, of course, is steadily diminishing the importance of the state commissions so far as railroads are concerned. It may safely be asserted that at least three fourths of southern trade is moving in interstate and foreign commerce, so that the jurisdiction of the commissions has now become so limited as to make their work and influence relatively insignificant. And with the ever rising proportion of interstate commerce to total commerce it seems certain that the rôle which the commissions are playing with reference to railroad regulation is to become of less and less importance.

As between regulation by the state commissions of the South and by the Interstate Commerce Commission, it is indisputable that comparison is greatly in favor of the latter. Regulation by the federal board, in spite of the complaints and criticism heaped upon it, has been, on the whole, both expert and intelligent. Regulation by the southern commissions has been neither. Since the principle of regulation has apparently come to stay, it is entirely pertinent to ask what remedy, if any, may be invoked. If the southern states shall continue their "penny-wise, pound-foolish" policy of compelling their

commissioners to administer the law on appropriations so beggarly small that intelligent and expert regulation is entirely out of the question, and if the commissioners themselves do not promptly adopt a broad-minded policy in connection, especially, with those large systems of railroad, like the Southern Railway, the Illinois Central and others, which are now subject to the conflicting policies of nearly a dozen states, it will be but fair to demand that state regulation be brought into complete harmony with federal regulation. The next step in the history of the regulation of the railroads may very possibly be the federal incorporation of all railroads transacting an interstate business, and the consequent subjecting of all state supervision to review by the Interstate Commerce Commission.

APPENDIX

RAILROAD COMMISSIONERS

VIRGINIA

1877-79	Thos. H. Carter.
1880	James McDonald.
1881-82	Asa Rogers, Jr.
1883-84	G. A. Martin.
1885-86	H. G. Moffett, Jr.
1887-1902	J. C. Hill.
1902-04	Beverly T. Crump, ch.; Henry Fairfax; Henry C. Stuart.
1905	Beverly T. Crump, ch.; Henry C. Stuart; Henry Fairfax — resigned Oct. 1; Joseph E. Willard, — from Oct. 1.
1906	Beverly T. Crump, ch.; Henry C. Stuart; Joseph Willard.
1907	Beverly T. Crump, ch. — resigned June 1; Robert R. Prentis, ch. — from June 1; Henry C. Stuart; Joseph E. Willard.
1908-09	Robert R. Prentis, ch; Joseph E. Willard; William F. Rhea.
1910-16	Robert R. Prentis, ch.; William F. Rhea; J. Richard Wingfield.

SOUTH CAROLINA

1879-82	M. L. Bonham.
1883-84	M. L. Bonham, ch.; L. J. Walker; T. B. Jeter — died, 1883; D. P. Duncan.
1885-90	M. L. Bonham, ch.; — died Aug. 27, 1890; D. P. Duncan; E. P. Jervey.

- 1891-92 D. P. Duncan, ch.; E. P. Jervey; H. R. Thomas.
 1893-94 D. P. Duncan, ch.; H. R. Thomas; Jefferson A. Sligh.
 1895-98 W. D. Evans, ch.; H. R. Thomas; J. C. Wilborn.
 1899-1900 W. D. Evans, ch.; J. C. Wilborn; C. W. Garriss.
 1901-02 J. C. Wilborn, ch.; C. W. Garriss; J. H. Wharton.
 1903-04 C. W. Garriss, ch.; J. H. Wharton; B. L. Caughman.
 1905-06 J. H. Wharton, ch.; B. L. Caughman; J. H. Earle.
 1907-10 B. L. Caughman, ch.; J. H. Earle; J. M. Sullivan
 — died Nov. 2, 1910; John G. Richards, Jr.
 — from Nov. 26, 1910; J. H. Earle was chair-
 man during 1909-10.
 1911-15 B. L. Caughman, ch.; John G. Richards, Jr.; G. McD. Hampton.
 1916 G. McD. Hampton, ch.; John G. Richards; Frank W. Shealy.

GEORGIA

- 1879-82 James M. Smith, ch.; Campbell Wallace; Samuel Barnett.
 1882-86 James M. Smith, ch.; Campbell Wallace; Leander M. Trammell.
 1886-90 Campbell Wallace, ch.; Leander M. Trammell; Alex S. Erwin.
 1890 Leander M. Trammell, ch.; Alex S. Erwin; James W. Robertson.
 1890-91 Leander M. Trammell, ch.; Alex S. Erwin; Virgil Powers.
 1891-93 Leander M. Trammell, ch.; Virgil Powers; Allen Fort.
 1893-95 Leander M. Trammell, ch.; Allen Fort; G. Gunby Jordan.
 1895-97 Leander M. Trammell, ch.; Allen Fort; Thos. C. Crenshaw.
 1897-99 Leander M. Trammell, ch.; Thos. C. Crenshaw; Spencer R. Atkinson.

- 1899-1901 Thos. C. Crenshaw, ch.; Spencer R. Atkinson;
J. Pope Brown.
- 1901-03 Spencer R. Atkinson, ch.; J. Pope Brown; G.
Gunby Jordan.
- 1903-04 J. Pope Brown, ch.; J. Warner Hill; Jos. M.
Brown.
- 1904-06 J. Warner Hill, ch.; Jos. M. Brown; O. B. Stevens.
- 1907 S. G. McLendon, ch.; H. Warner Hill; O. B.
Stevens; George Hillyer; Fuller E. Callaway.
- 1908 S. G. McLendon, ch.; H. Warner Hill; O. B.
Stevens; George Hillyer; Chas. M. Candler.
- 1909-10 H. Warner Hill, ch.; O. B. Stevens; George
Hillyer; Chas. M. Candler; Joseph F. Gray.
- 1911-16 Chas. M. Candler, ch.; George Hillyer; Joseph F.
Gray; Paul B. Trammell; James A. Perry.

KENTUCKY

- 1880-82 J. Fletcher Johnston, ch.; C. H. Rochester; C. E.
Kinkaid.
- 1882-84 D. Howard Smith, ch.; Willis B. Machen; Wm.
Beckner.
- 1884-88 J. P. Thompson, ch.; John D. Young; A. R. Boone
— died Jan. 27, 1886; I. A. Spaulding —
from Jan. 27, 1886.
- 1888-92 I. A. Spaulding, ch.; W. B. Fleming; John P.
Hager — resigned?; George H. Adams —
appointed to fill unexpired term.
- 1892-95 C. C. McChord, ch. — resigned May 24, 1892;
James M. Saunders — from May 24, 1892;
Urey Woodson; Charles B. Poyntz.
- 1895-99 John C. Wood, ch.; H. S. Irwin; J. F. Dempsey.
- 1899-1903 C. C. McChord, ch.; John C. Wood; J. P. Dempsey.
- 1903-1907 C. C. McChord, ch.; — resigned, Dec. 8, 1903;
W. P. Walton — from Dec. 8, 1903; McD.
Ferguson; A. T. Siler.

- 1907-09 A. T. Siler, ch.; Mcd. Ferguson — died June 17, 1909; John P. Haswell, Jr. — from June 17, 1909, to Dec. 1, 1909; Lawrence B. Finn — from Dec. 1, 1909; L. P. Tarlton.
- 1909-16 Lawrence B. Finn, ch.; W. F. Klair; H. G. Garrett.

ALABAMA

- 1881-84 W. S. Bragg, pres.; Jas. Crook; Chas. P. Ball.
- 1884-92 H. R. Shorter, pres.; L. W. Lawler; W. C. Tunstall.
- 1892-95 H. R. Shorter, pres.; W. C. Tunstall; ?? Holtzclaw — died July 18, 1893; Willis G. Clark — from July 18, 1893.
- 1895-97 H. R. Shorter, pres.; Harvey E. Jones; Ross C. Smith.
- 1897-99 James Crook, pres.; Harvey E. Jones; Ross C. Smith.
- 1899-1901 James Crook, pres.; A. E. Caffee; Osceola Kyle.
- 1901-03 John V. Smith, pres.; A. E. Caffee; W. C. Tunstall.
- 1903-05 John V. Smith, pres.; W. T. Sanders; W. C. Tunstall.
- 1905-07 *Missing.*
- 1907-14 Charles Henderson, pres.; W. D. Nesbitt; Jno. G. Harris.
- 1914-16 Sam P. Kennedy, pres.; B. H. Cooper; S. P. Gaillard.

TENNESSEE

- 1883-84 *Missing.*
- 1897-98 E. L. Bulloch, ch.; N. H. White; F. M. Thompson.
- 1899-1904 N. W. Baptist, ch.; J. N. McKenzie; Thos. L. Williams; J. N. McKenzie was chairman during 1903-04.
- 1905-06 B. A. Enloe, ch.; J. N. McKenzie — died Aug. 3, 1906; N. H. White—from Aug. 2, 1906; Thos. L. Williams.

- 1907-15 B. A. Enloe, ch.; Frank Avent; Harvey H. Hannah.
 1915-16 B. A. Enloe, ch.; Harvey H. Hannah; George N. Welch.

MISSISSIPPI

- 1884-86 *Missing.*
 1886-87 J. F. Sessions, ch.; J. C. Kyle; Wm. McWillie.
 1887-89 J. F. Sessions, ch.; J. C. Kyle; Walter McLaurin.
 1889-95 J. F. Sessions, ch.; J. C. Kyle; J. H. Askew. In 1891 the title of "chairman" was changed to that of "president."
 1895-99 J. J. Evans, pres.; J. D. McInnis; M. M. Evans.
 1899-1903 J. D. McInnis, pres.; A. Q. May; J. C. Kincannon.
 1903-07 S. P. McNair, pres.; J. C. Kincannon; R. L. Bradley.
 1907-09 F. M. Lee, pres.; John A. Webb; W. R. Scott.
 1909-11 John A. Webb, pres.; W. R. Scott; F. M. Sheppard.
 1911-16 F. M. Sheppard, pres.; Geo. R. Edwards; W. B. Wilson.

FLORIDA

- 1887-91 G. G. McWhorter, pres.; Enoch J. Vann; William Himes.
 1897-98 R. H. M. Davidson, ch.; H. E. Day; J. M. Bryan.
 1899-1900 H. E. Day, ch.; J. M. Bryan; J. L. Morgan.
 1901-02 H. E. Day, ch. — resigned Oct. 1, 1902; R. Hudson Burr — from Oct. 1, 1902; J. M. Bryan; J. L. Morgan (chairman from Oct. 1, 1902).
 1903-06 Jefferson B. Browne, ch.; J. L. Morgan; R. Hudson Burr.
 1907-08 R. Hudson Burr, ch.; J. L. Morgan; N. A. Blitch.
 1909-16 R. Hudson Burr, ch.; N. A. Blitch; R. C. Dunn.

NORTH CAROLINA

- 1891-94 James W. Wilson, ch.; T. W. Mason; E. C. Beddingfield.
- 1895-97 James W. Wilson, ch.; E. C. Beddingfield; C. O. Wilson.
- 1897-99 L. C. Caldwell, ch.; Jno. H. Pearson; D. H. Abbott.
- 1899 Franklin McNeill, ch.; E. C. Beddingfield; Sam L. Rogers — ousted by N. C. Supreme Court Nov. 22; D. H. Abbott — from Nov. 22.
- 1900-02 Franklin McNeill, ch.; Sam L. Rogers; D. H. Abbott.
- 1903-08 Franklin McNeill, ch.; Sam L. Rogers; E. C. Beddingfield.
- 1909 Franklin McNeill, ch.; Sam L. Rogers; B. F. Aycock.
- 1910 Franklin McNeill, ch.; Sam L. Rogers; Henry C. Brown.
- 1911 Franklin McNeill, ch.; W. T. Lee; Edward L. Travis.
- 1912-16 Edward L. Travis, ch.; W. T. Lee; George P. Peñ.

LOUISIANA

- 1899-1906 C. L. de Fuentes, ch.; W. L. Foster; R. N. Sims — resigned April, 1901; Overton Cade — from April 1901.
- 1906-08 C. L. de Fuentes, ch.; Overton Cade; J. J. Meredith.
- 1908-10 C. L. de Fuentes, ch.; J. J. Meredith; Shelby Taylor; Mr. Meredith was chairman during 1910.
- 1910-12 J. J. Meredith, ch.; Shelby Taylor; Henry B. Schreiber.
- 1912 Shelby Taylor, ch.; Henry B. Schreiber; B. A. Bridges.
- 1914-16 Shelby Taylor, ch.; B. A. Bridges; J. T. Michel.

WEST VIRGINIA

- 1913-15 Virgil L. Highland, ch. — resigned July 10, 1913; J. S. Lakin—from July 10, 1913; resigned July 17, 1913; Lee Ott,—from July 17, 1913, chairman. Wade C. Kilmer; Charles H. Bronson; Howard N. Ogden.
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